

Milstein, Adelman & Kreger, LLP
2800 Donald Douglas Loop North
Santa Monica, CA 90405

MILSTEIN, ADELMAN & KREGER, LLP
WAYNE S. KREGER, State Bar No. 154759
WILLIAM A. BAIRD, State Bar No. 192675
2800 Donald Douglas Loop North
Santa Monica, California 90405
Telephone: (310) 396-9600
Facsimile: (310) 396-9635
Email: Wkreger@maklawyers.com
TBaird@maklawyers.com

LAW OFFICE OF STEVEN ELSTER
STEVEN ELSTER, State Bar No. 227545
785/E2 Oak Grove Road, #201
Concord, CA 94518-3617
Telephone: (925) 324-2159
Facsimile: (925) 945-1276
Email: manfromcal@sbcglobal.net

Attorney for Plaintiffs James Brady,
Travis Call, Sarah Cavanagh,
Julia Longenecker, Pedro Noyola &
Christopher Sulit

IN THE UNITED STATES DISTRICT COURT

THE NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO

JAMES BRADY, TRAVIS CALL, SARAH
CAVANAGH, JULIA LONGENECKER,
PEDRO NOYOLA and CHRISTOPHER SULIT,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

DELOITTE & TOUCHE LLP, a limited liability
partnership; DELOITTE TAX LLP; and DOES
1-10, inclusive,

Defendants.

CASE NO.: C-08-00177 SI

**PLAINTIFFS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
TRANSFER**

[Filed Concurrently Herewith: Plaintiffs'
Opposition To Defendants' Motion To
Transfer; Declaration Of Steven Elster In
Support Of Plaintiffs' Opposition To
Defendants' Motion To Transfer; And
[Proposed] Order Denying Defendants'
Motion]

Date: May 30, 2008
Time: 9:00 a.m.
Courtroom: 10
Judge: Hon. Susan Illston

Pursuant to Federal Rules of Evidence sections 201(c) and (d), Plaintiffs James Brady, Travis Call, Sarah Cavanagh, Julia Longenecker, Pedro Noyola and Christopher Sulit (collectively "Plaintiffs") hereby submit the following Request for Judicial Notice in Support of Plaintiffs' Opposition to Deloitte & Touche LLP and Deloitte Tax LLP's ("Defendants") Motion for a Transfer. Plaintiffs request that the Court take judicial notice of the following documents marked and attached hereto:

Exhibit A: Order Re Jury Trial, April 11, 2007, in *Mekhitarian v. Deloitte & Touche (ICS) LLC*. Attached herewith as Exhibit "A" is a true and correct copy of said order.

Exhibit B: Page Printed From Defendants' Website Providing A List Of Defendants' California Offices. Attached herewith as Exhibit "B" is a true and correct copy of said document.

Exhibit C: Print Outs Printed From The Department Of State of New York's Website That Lists Defendants' State Of Incorporation and Principal Offices. Attached herewith as Exhibit "C" is a true and correct copy of said Print Outs.

Exhibit D: Declaration Of Barbara Newman Attached To Defendants Notice Of Removal that Defendants Filed In the case of *Mekhitarian v. Deloitte & Touche (ICS) LLC*. Attached herewith as Exhibit "D" is a true and correct copy of said Notice Of Removal.

Exhibit E: Declaration Of Kathleen Farlow Attached To Defendant Deloitte Tax LLP'S Response To Order To Show Cause Regarding Principal Place Of Business that Defendant Filed In the case of *Mekhitarian v. Deloitte & Touche (ICS) LLC*. Attached herewith as Exhibit "E" is a true and correct copy of said Response.

Exhibits A, B, C, D, and E are properly subject to judicial notice pursuant to Federal Rules of Evidence sections 201(c) and (d). The Exhibits are relevant in that they demonstrate information with respect to Defendants' operations in this state as well as their operations in the state of New York.

DATED: May 9, 2008

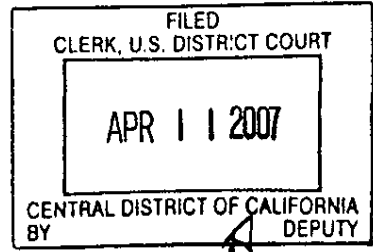
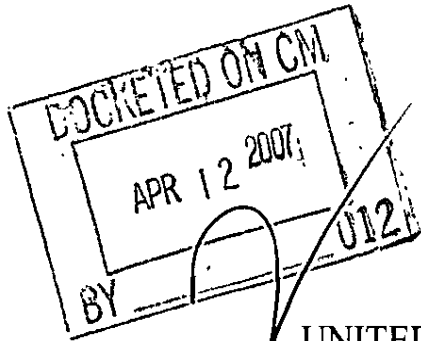
MILSTEIN, ADELMAN & KREGER, LLP

/s/ WILLIAM A. BAIRD
WILLIAM A. BAIRD

Milstein, Adelman & Kreger, LLP
2800 Donald Douglas Loop North
Santa Monica, CA 90405

ORIGINAL

x - SEND



SCANNED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STEPAN MEKHITARIAN

CASE NO. CV 07-412-DSF(MANx)

ORDER RE JURY TRIAL

I. ORDER RE DEADLINES:

Plaintiff,

A. Adding Parties or Amending Pleadings: 5/1/07

vs.

B. Discovery Cut-off: 8/22/08

DELOITTE & TOUCHE (ICS) LLC,
et al.

C. Expert Witness Exchange Deadline:
Initial: 7/11/08;
Rebuttal: 8/7/08;
Cut-off: 9/19/08

Defendant.

D. Motion Hearing Cut-off:
7/28/08 at 1:30 p.m.

E. Settlement Conference Cut-off:
8/11/08 (Procedure #3)

F. Final Pretrial Conference:
9/22/08 at 3:00 p.m.

G. Trial Date:
10/21/08 at 8:00 a.m.
(trial estimate - <4 weeks)

II. ORDER RE TRIAL PREPARATION

III. ORDER GOVERNING CONDUCT OF ATTORNEYS AND PARTIES

22

I**DEADLINES****A. PARTIES/PLEADINGS**

The Court has established a cut-off date for adding parties or amending pleadings. All motions to add parties or to amend the pleadings must be noticed, and must be heard on or before the cut-off date. All unserved parties will be dismissed at the time of the pretrial conference pursuant to Local Rule 16-7.1.

B. DISCOVERY AND DISCOVERY CUT-OFF

1. Discovery Cut-off: The Court has established a cut-off date for discovery, including expert discovery, if applicable. This is not the date by which discovery requests must be served; it is the date by which all discovery, including all hearings on any related motions, is to be completed.

2. Discovery Disputes: Counsel are expected to comply with all Local Rules and the Federal Rules of Civil Procedure concerning discovery. Whenever possible, the Court expects counsel to resolve discovery problems among themselves in a courteous, reasonable, and professional manner. The Court expects that counsel will adhere strictly to the Civility and Professionalism Guidelines (which can be found on the Court's website under "Attorney Information> Attorney Admissions").

3. Discovery Motions: Any motion challenging the adequacy of discovery responses must be filed, served, and calendared sufficiently in advance of the discovery cut-off date to permit the responses to be obtained before that date, if the motion is granted.

4. Depositions: All depositions shall commence sufficiently in advance of the discovery cut-off date to permit their completion and to permit the deposing party enough time to bring any discovery motions concerning the deposition

before the cut-off date. Given the requirements to “meet and confer,” and notice requirements, in most cases a planned motion to compel must be discussed with opposing counsel at least six weeks before the cut-off.

5. Written Discovery: All interrogatories, requests for production of documents, and requests for admissions must be served sufficiently in advance of the discovery cut-off date to permit the discovering party enough time to challenge (via motion practice) responses deemed to be deficient.

6. Expert Discovery: All disclosures must be made in writing. The parties should begin expert discovery shortly after the initial designation of experts. The final pretrial conference and trial dates will not be continued merely because expert discovery is not completed. Failure to comply with these or any other orders concerning expert discovery may result in the expert being excluded as a witness.

C. LAW AND MOTION

The Court has established a cut-off date for the hearing of motions. All motions must be noticed so that the hearing takes place on or before the motion cut-off date. Counsel are to provide chambers with conformed courtesy copies of all documents. Courtesy copies should not be put in envelopes. Counsel should consult the Court’s Standing Order, previously provided, to determine the Court’s requirements concerning motions. A copy of the Standing Order is also available on the Court’s website at www.cacd.uscourts.gov>Judges’ Procedures and Schedules>Hon. Dale S. Fischer.

D. FINAL PRETRIAL CONFERENCE

1. A final pretrial conference date has been set pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 16-7. Unless excused for good cause, each party appearing in this action shall be represented at the final pretrial conference by the attorney who is to have charge of the conduct of the trial on behalf of such party. Counsel should be prepared to discuss streamlining the trial,

1 including presentation of testimony by deposition excerpts or summaries, time
2 limits, stipulations as to undisputed facts, and qualification of experts by admitted
3 resumes.

4 2. STRICT COMPLIANCE WITH LOCAL RULE 16 IS REQUIRED.
5 THIS ORDER SETS FORTH SOME DIFFERENT AND SOME ADDITIONAL
6 REQUIREMENTS. THIS COURT DOES NOT EXEMPT *PRO PER*
7 PLAINTIFFS FROM THE REQUIREMENTS OF RULE 16. Carefully prepared
8 memoranda of contentions of fact and law, witness lists, a joint exhibit list, and a
9 proposed final pretrial conference order shall be submitted in accordance with the
10 Rules, and the format of the proposed final pretrial conference order shall
11 conform to the format set forth in Appendix A to the Local Rules. Failure of
12 these documents to comply with these requirements may result in the final pretrial
13 conference being taken off-calendar or continued, or in other sanctions.

14 3. The memoranda of contentions of fact and law, witness lists and the
15 joint exhibit list are due not later than 21 days before the final pretrial conference,
16 and the proposed final pretrial conference order is to be lodged not later than
17 seven days before the final pretrial conference.

18 4. In addition to the requirements of Local Rule 16, the witness lists must
19 include a brief (one or two paragraph) description of the testimony, and a time
20 estimate for both direct and cross-examination (separately stated).

21 5. Other documents to be filed in preparation for, and issues to be
22 addressed at, the final pretrial conference are discussed below.

23 E. SETTLEMENT PROCEDURES

24 A settlement procedure must be identified in every case pursuant to Local
25 Rule 16-14, et seq. The Court will normally be guided by counsel's agreement as
26 to what procedure is appropriate for the case and when the optimum time for that
27 procedure is. Counsel must, however, complete a settlement conference no later
28 than the date set by the Court at the scheduling conference. Not to the exclusion

of other procedures, the following are available:

- (1) a settlement conference before the magistrate judge assigned to the case;
- (2) a settlement conference or mediation before an attorney selected from the Attorney Settlement Panel;
- (3) the employment (at the parties' expense) of a private judge, mediator, or arbitrator.

If a case is selected for the Mandatory ADR Program, the parties may choose option (3) instead. The parties may not choose option (1). Judge Fischer will hold a settlement conference at the request of the parties in cases with a trial estimate of more than four days.

No case will proceed to trial unless all parties, including the principals of all corporate parties, have appeared personally at a settlement conference.

II

ADDITIONAL TRIAL PREPARATION

A. MOTIONS IN LIMINE

All motions *in limine* must be filed at least three weeks before the final pretrial conference. Counsel are to meet and confer with opposing counsel to determine whether opposing counsel intends to introduce the disputed evidence, and to attempt to reach an agreement that would obviate the motion. Opposition must be filed ten days before the final pretrial conference. The Court will rule on motions *in limine* at the final pretrial conference. Motions *in limine* should address specific issues (i.e., *not* "to exclude all hearsay," etc.). Motions *in limine* should not be disguised motions for summary adjudication of issues.

B. JURY INSTRUCTIONS, SPECIAL VERDICT FORMS, VOIR DIRE, JURY SELECTION

1. Fourteen days before the meeting of counsel required by Local Rule 16-

2, plaintiff shall serve plaintiff's proposed jury instructions and special verdict forms, and defendant shall serve defendant's proposed jury instructions and special verdict forms as to any affirmative defenses, counterclaims, etc. Within ten days each shall serve objections to the other's instructions and verdict forms. Before or at the Rule 16-2 meeting, counsel are ordered to meet and confer and attempt to come to agreement on the proposed jury instructions and verdict forms.

2. When the Manual of Model Jury Instructions for the Ninth Circuit provides an applicable jury instruction, the parties should submit the most recent version, modified and supplemented to fit the circumstances of this case. Where language appears in brackets, the appropriate language should be selected. All blanks should be completed. Where California law applies, counsel should use the current edition of California Jury Instructions -- Civil ("BAJI" or "CACI"). If neither is applicable, counsel should consult the current edition of O'Malley, et al., Federal Jury Practice and Instructions. Each requested instruction shall (a) cite the authority or source of the instruction, (b) be set forth in full, (c) be on a separate page, (d) be numbered, (e) cover only one subject or principle of law, and (f) not repeat principles of law contained in any other requested instruction.

3. At the time of filing the proposed final pretrial conference order, counsel shall file with the Court a JOINT set of jury instructions on which there is agreement. All blanks in standard forms should be filled in. The Court expects counsel to agree on the substantial majority of jury instructions, particularly when pattern or model instructions provide a statement of applicable law. If one party fails to comply with the provisions of this section, the other party must file a unilateral set of jury instructions, unless that party wishes to waive jury trial.

4. At the same time, each party shall file its proposed jury instructions that are objected to by any other party. Each disputed instruction must have attached a short (one or two paragraph) statement, including points and authorities in support of the instruction as well as a brief statement, including points and

1 authorities, in support of any objections. A proposed alternative instruction must
 2 be provided, if applicable. If the Court believes that there are so many disputed
 3 instructions that the trial would be unnecessarily interrupted in order for the Court
 4 to resolve disputes, the Court may determine that the matter is not yet ready to be
 5 tried, and may order counsel to continue to meet and confer until most of the
 6 disputes are resolved.

7 5. Counsel must provide the documents described in paragraphs 3 and 4 on
 8 a disk in WordPerfect 9 (or above) format at the time they file their proposed jury
 9 instructions.

10 6. The Court will send one or more copies of the instructions into the jury
 11 room for the jury's use during deliberations. Therefore, in addition to the copies
 12 described above, the disk must contain a "clean" set of jury instructions,
 13 containing only the text of the instruction (one per page) with the caption "Jury
 14 Instruction No. __" at the top (eliminating titles, supporting authority, etc.).

15 7. Counsel must provide an index of all instructions submitted, which must
 16 include the following:

- 17 a. The number of the instruction;
- 18 b. The title of the instruction;
- 19 c. the source of the instruction and any relevant case citations;
- 20 d. The page number of the instruction.

21 For example:

<u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page</u>
22 1	Trademark - Defined	9th Cir. 15.3.2	7
23	(15 U.S.C. § 1127)		

24
 25 **8. FAILURE TO FOLLOW THE PRECEDING PROVISIONS OF**
 26 **THIS SECTION WILL SUBJECT THE NON-COMPLYING PARTY**
 27 **AND/OR ATTORNEY TO SANCTIONS AND WILL BE DEEMED TO**
 28 **CONSTITUTE A WAIVER OF JURY TRIAL.**

9. During the trial and before argument, the Court will meet with counsel and settle the instructions, and counsel will have an opportunity to make a further record concerning their objections.

10. At the time of filing the proposed final pretrial conference order, counsel should file a jointly prepared one or two page statement of the case to be read by the Court to the prospective panel of jurors before commencement of voir dire.

11. The Court will conduct the voir dire. The Court provides a list of basic questions, and may provide a list of additional questions to jurors before voir dire. (This is not a questionnaire to be completed by jurors.) Counsel may, but are not required to, submit a list of proposed case-specific voir dire questions at the time they file the proposed final pretrial conference order.

12. The Court will inquire concerning whether serving on the jury would create a substantial hardship, and may excuse jurors for that reason, before beginning individual voir dire.

13. In most cases the Court will conduct its initial voir dire of 14 prospective jurors who will be seated in the jury box. Generally the Court will select seven or eight jurors.

14. Each side will have three peremptory challenges. If fourteen jurors are seated in the box and all six peremptories are exercised, the remaining eight jurors will constitute the jury panel. If fewer than six peremptories are exercised, the eight jurors in the lowest numbered seats will be the jury. The Court will not necessarily accept a stipulation to a challenge for cause. If one or more challenges for cause are accepted, and all six peremptories are exercised, the Court may decide to proceed with six or seven jurors.

C. TRIAL EXHIBITS

1. Counsel are to prepare their exhibits for presentation at the trial by placing them in binders indexed by exhibit number with tabs or dividers on the

1 right side. Counsel shall submit to the Court an original and two copies of the
 2 binders. The exhibits shall be in three-ring binders labeled on the spine portion
 3 of the binder as to the volume number and contain an index of each exhibit
 4 included in the volume. Exhibits must be numbered in accordance with Local
 5 Rule 16.5.

6 2. The Court requires that the following be submitted to the Courtroom
 7 Deputy Clerk (“CRD”) on the first day of trial:

8 a. The binder of original exhibits with the Court’s exhibit tags,
 9 yellow tags for plaintiff and blue tags for defendant, stapled to the front of the
 10 exhibit on the upper right-hand corner with the case number, case name, and
 11 exhibit number placed on each tag.

12 b. One binder with a copy of each exhibit tabbed with numbers as
 13 described above for use by the Court, and one binder for the use of the CRD and
 14 court reporter. (Exhibit tags are not necessary on these copies.)

15 c. Three copies of exhibit lists.

16 d. Three copies of witness lists in the order in which the witnesses
 17 may be called to testify.

18 3. Where a significant number of exhibits will be admitted, the Court
 19 encourages counsel, preferably by agreement, to consider ways in which
 20 testimony about exhibits may be made intelligible to the jury while it is being
 21 presented. Counsel may consider such devices as overhead projectors, jury
 22 notebooks for admitted exhibits, or enlargements of important exhibits. The
 23 Court has an Elmo and other equipment available for use during trial. Call the
 24 CRD if you wish to visit when the Court is not in session to practice using the
 25 equipment. The Court does not permit exhibits to be “published” by passing
 26 them up and down the jury box. Exhibits may be displayed using the screen in
 27 the courtroom, only if the process does not become too time-consuming.

28 4. All counsel are to meet not later than ten days before trial and to

1 stipulate, so far as is possible, to foundation, to waiver of the best evidence rule,
2 and to those exhibits that may be received into evidence at the start of the trial.
3 The exhibits to be so received will be noted on the extra copies of the exhibit
4 lists.

5 D. JURY TRIAL

6 On the first day of trial, court will commence at 8:00 a.m. and conclude at
7 approximately 4:00 p.m. with the standard lunch break. On the first day of trial
8 counsel must appear at 8:00 a.m. to discuss preliminary matters with the Court.
9 The jury panel will be called when the Court is satisfied that the matter is ready
10 for trial. Jury selection usually takes only a few hours. Counsel should be
11 prepared to proceed with opening statements and witness examination
12 immediately after jury selection. After the initial day of trial, trial days are
13 Tuesday through Friday from 8:00 a.m. to 1:30 p.m. with two fifteen-minute
14 breaks, normally at 10:00 a.m. and 12:00 p.m.

16 III

17 CONDUCT OF ATTORNEYS AND PARTIES

19 A. OPENING STATEMENTS, EXAMINING WITNESSES, AND 20 SUMMATION

- 21 1. Counsel must use the lectern for opening statements, examination of
22 witnesses, and summation.
- 23 2. Counsel must not consume time by writing out words, drawing charts or
24 diagrams, etc. Counsel may do so in advance and explain that the item was
25 prepared earlier as ordered by the Court to save time.
- 26 3. The Court will honor (and may establish) reasonable time estimates for
27 opening and closing arguments, examination of witnesses, etc.

28 B. OBJECTIONS TO QUESTIONS

1 1. Counsel must not use objections for the purpose of making a speech,
2 recapitulating testimony, or attempting to guide the witness.

3 2. When objecting, counsel must rise to state the objection and state only
4 that counsel objects and the legal ground of objection. If counsel wishes to argue
5 an objection further, counsel must ask for permission to do so.

6 C. GENERAL DECORUM

7 1. Counsel should not approach the CRD or the witness box without
8 specific permission. If permission is given, counsel should return to the lectern
9 when their purpose has been accomplished. Counsel should not question a
10 witness at the witness stand.

11 2. Counsel should rise when addressing the Court, and when the Court or
12 the jury enters or leaves the courtroom.

13 3. Counsel should address all remarks to the Court. Counsel are not to
14 address the CRD, the court reporter, persons in the audience, or opposing
15 counsel. If counsel wish to speak with opposing counsel, counsel must ask
16 permission to do so. Any request for the re-reading of questions or answers shall
17 be addressed to the Court. Such requests should be limited. Requests may not be
18 granted.

19 4. Counsel should not address or refer to witnesses or parties by first
20 names alone. Young witnesses (under 14) may, however, be addressed and
21 referred to by first names.

22 5. Counsel must not offer a stipulation unless counsel has conferred with
23 opposing counsel and has verified that the stipulation will be acceptable.

24 6. While Court is in session, counsel must not leave counsel table to confer
25 with any personnel or witnesses in the back of the courtroom unless permission
26 has been granted in advance.

27 7. Counsel should not by facial expression, nodding, or other conduct
28 exhibit any opinion, adverse or favorable, concerning any testimony being given

1 by a witness. Counsel should admonish counsel's own clients and witnesses to
2 avoid such conduct.

3 8. Counsel should not talk to jurors at all, and should not talk to co-
4 counsel, opposing counsel, witnesses or clients where the conversation can be
5 overheard by jurors. Each counsel should admonish counsel's own clients and
6 witnesses to avoid such conduct.

7 9. Where a party has more than one lawyer, only one may conduct the
8 direct or cross-examination of a particular witness, or make objections as to that
9 witness.

10 D. PROMPTNESS OF COUNSEL AND WITNESSES

11 1. The Court makes every effort to begin proceedings at the time set.
12 Promptness is expected from counsel and witnesses. Once counsel are engaged in
13 trial, this trial is counsel's first priority. The Court will not delay the trial or
14 inconvenience jurors except under extraordinary circumstances. The Court will
15 advise other courts that counsel are engaged in trial in this Court on request.

16 2. If a witness was on the stand at a recess, counsel must have the witness
17 back on the stand, ready to proceed, when the court session resumes.

18 3. If a witness was on the stand at adjournment, counsel must have the
19 witness adjacent to, but not on the stand, ready to proceed when the court session
20 resumes.

21 4. Counsel must notify the CRD in advance if any witness should be
22 accommodated based on a disability or for other reasons.

23 5. No presenting party may be without witnesses. If counsel has no more
24 witnesses to call and there is more than a brief delay, the Court may deem that
25 party to have rested.

26 6. The Court attempts to cooperate with professional witnesses and will,
27 except in extraordinary circumstances, accommodate them by permitting them to
28 be called out of sequence. Counsel must anticipate any such possibility and

1 discuss it with opposing counsel. If there is an objection, counsel must confer
2 with the Court in advance.

3 E. EXHIBITS

4 1. Each counsel should keep counsel's own list of exhibits and should note
5 when each has been admitted into evidence.

6 2. Each counsel is responsible for any exhibits that counsel secures from
7 the CRD and must return them before leaving the courtroom at the end of the
8 session.

9 3. An exhibit not previously marked should, at the time of its first mention,
10 be accompanied by a request that the CRD mark it for identification. To save
11 time, counsel must show a new exhibit to opposing counsel before it is mentioned
12 in Court.

13 4. Whenever in counsel's opinion a particular exhibit is admissible, it
14 should be moved into evidence, unless tactical or other considerations dictate
15 otherwise.

16 5. Counsel are to advise the CRD of any agreements they have with
17 respect to the proposed exhibits and as to those exhibits that may be received so
18 that no further motion to admit need be made.

19 6. When referring to an exhibit, counsel should refer to its exhibit number
20 whenever possible. Witnesses should be asked to do the same.

21 7. Counsel must not ask witnesses to draw charts or diagrams nor ask the
22 Court's permission for a witness to do so. If counsel wishes to question a witness
23 in connection with graphic aids, the material must be fully prepared before the
24 court session starts.

25 F. DEPOSITIONS

26 1. All depositions to be used at trial, either as evidence or for
27 impeachment, must be signed and lodged with the CRD on the first day of trial or
28 such earlier date as the Court may order. Counsel should verify with the CRD

that the relevant deposition is in the CRD's possession and is properly signed.

2. In using depositions of an adverse party for impeachment, either one of the following procedures may be adopted:

(a) If counsel wishes to read the questions and answers as alleged impeachment and ask the witness no further questions on that subject, counsel shall first state the page and line where the reading begins and the page and line where the reading ends, and allow time for any objection. Counsel may then read the portions of the deposition into the record.

(b) If counsel wishes to ask the witness further questions on the subject matter, the deposition is placed in front of the witness and the witness is told to read silently the pages and lines involved. Then counsel may either ask the witness further questions on the matter and thereafter read the quotations, or read the quotations and thereafter ask further questions. Counsel should have an extra copy of the deposition for this purpose.

3. Where a witness is absent and the witness's testimony is offered by deposition, counsel may (a) have a reader occupy the witness chair and read the testimony of the witness while the examining lawyer asks the questions, or (b) have counsel read both the questions and answers.

G. USING NUMEROUS ANSWERS TO INTERROGATORIES AND REQUESTS FOR ADMISSIONS

Whenever counsel expects to offer a group of answers to interrogatories or requests for admissions extracted from one or more lengthy documents, counsel should prepare a new document listing each question and answer, and identifying the document from which it has been extracted. Copies of this new document should be given to the Court and opposing counsel. This procedure is intended to save time.

H. ADVANCE NOTICE OF UNUSUAL OR DIFFICULT ISSUES

If any counsel has reason to anticipate that a difficult question of law or

1 evidence will necessitate legal argument requiring research or briefing, counsel
2 must give the Court advance notice. Counsel are directed to notify the CRD at
3 the day's adjournment if an unexpected legal issue arises that could not have been
4 foreseen and addressed by a motion *in limine*. See Fed. R. Evid. 103. Counsel
5 must also advise the CRD at the end of each trial day of any issues that must be
6 addressed outside the presence of the jury, so that there is no interruption of the
7 trial. THE COURT WILL NOT KEEP JURORS WAITING.

8
9
10 ***N.B. "COUNSEL," AS USED IN THIS ORDER, INCLUDES PARTIES***
11 ***APPEARING IN PROPRIA PERSONA.***

12
13 IT IS SO ORDERED.

14
15
16 DATED: 4-11-07



Dale S. Fischer
United States District Judge

CASE NO. CV DSF(x)

VS.

EXHIBIT LIST

Defendant(s).

[illegible]

FINAL JOINT TRIAL WITNESS ESTIMATE FORM

CASE: _____

TRIAL DATE: _____

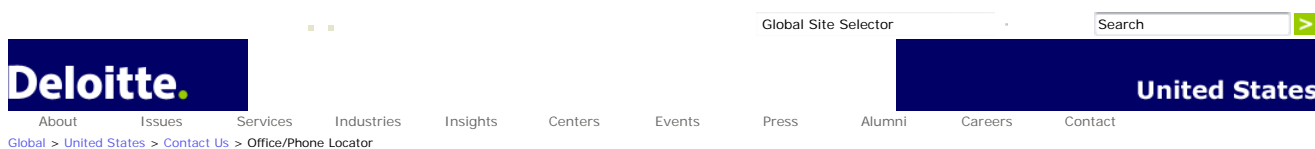
	WITNESS NAME	PARTY CALLING WITNESS AND ESTIMATE	X-EXAMINER'S ESTIMATE	DESCRIPTION OF TESTIMONY	COMMENTS
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
	TOTAL ESTIMATES THIS PAGE:				

Instructions:

(1) List witnesses (last name first). (2) For description, be extremely brief, e.g., "eyewitness to accident" or "expert on standard of care." (3) Use estimates within fractions of an hour, rounded off to closest quarter of an hour, e.g., if you estimate 20 minutes, make it .25. An estimate of one and one-half hours would be 1.5. An estimate of three-quarters of an hour would be .75; (4) Note special factors in "Comments" column, e.g., "Needs interpreter;" (5)

Entries may be in handwriting if very neat and legible.

SCANNED



Office/Phone Locator

With offices in more than 80 U.S. cities, our assurance and advisory, tax and management consulting professionals are well within reach. To find an **office address**, **phone** or **fax** number, select a U.S. state from the box below.

Please select a state:

Foster City - Consulting

[Map](#)

950 Tower Lane
Suite 1500
Foster City, California 94404
UNITED STATES
Phone Number: 650-574-0223
Fax Number: 650-574-7196

Foster City - Deployment Center

[Map](#)

950 Tower Lane
Suite 130
Foster City, California 94404
UNITED STATES
Phone Number: 650-372-4744
Fax Number: 650-574-7505

Fresno

[Map](#)

5250 N. Palm Ave.
Suite 300
Fresno, California 93704
UNITED STATES
Phone Number: 559-449-6300
Fax Number: 559-431-5244

Los Angeles

[Map](#)

Two California Plaza
350 S. Grand Ave.
Suite 200
Los Angeles, California 90071-3462
UNITED STATES
Phone Number: 213-688-0800
Fax Number: 213-688-0100

Oakland

[Map](#)

1111 Broadway
Suite 2100
Oakland, California 94607-4036
UNITED STATES
Phone Number: 510-287-2700
Fax Number: 510-835-4888

Orange County

[Map](#)

695 Town Center Drive
Suite 1200
Costa Mesa, California 92626-1979
UNITED STATES
Phone Number: 714-436-7100
Fax Number: 714-436-7200

Sacramento - Prospect Park

[Map](#)

2868 Prospect Park Drive
Suite 400
Rancho Cordova, California 95670
UNITED STATES
Phone Number: 916-288-3100
Fax Number: 916-288-3131

San Diego

[Map](#)

701 "B" Street
Suite 1900
San Diego, California 92101-8198
UNITED STATES
Phone Number: 619-232-6500

Fax Number: 619-237-1755

San Francisco

[Map](#)

50 Fremont St.
Suite 3100
San Francisco, California 94105-2230
UNITED STATES
Phone Number: 415-783-4000
Fax Number: 415-783-4329

San Jose

[Map](#)

225 W. Santa Clara St.
San Jose, California 95113
UNITED STATES
Phone Number: 408-704-4000
Fax Number: 408-704-3083

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 **Bookmark**   

NYS Department of State

Division of Corporations

Entity Information

Selected Entity Name: DELOITTE & TOUCHE LLP

Selected Entity Status Information

Current Entity Name: DELOITTE & TOUCHE LLP

Initial DOS Filing Date: MAY 06, 1997

County:

Jurisdiction: DELAWARE

Entity Type: FOREIGN REGISTERED LIMITED LIABILITY PARTNERSHIP

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

CORPORATION SERVICE COMPANY

80 STATE STREET

ALBANY, NEW YORK, 12207

Principal Executive Office

DELOITTE & TOUCHE LLP

1633 BROADWAY

NEW YORK, NEW YORK, 10019

Registered Agent

CORPORATION SERVICE COMPANY

80 STATE STREET

ALBANY, NEW YORK, 12207

NOTE: New York State does not issue organizational identification numbers.

[Search Results](#)

[New Search](#)

[Division of Corporations, State Records and UCC Home Page](#) [NYS Department of State Home Page](#)

NYS Department of State

Division of Corporations

Entity Information

Selected Entity Name: DELOITTE TAX LLP

Selected Entity Status Information

Current Entity Name: DELOITTE TAX LLP

Initial DOS Filing Date: JUNE 11, 2003

County:

Jurisdiction: DELAWARE

Entity Type: FOREIGN REGISTERED LIMITED LIABILITY PARTNERSHIP

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

DELOITTE TAX LLP
ATTN: LEGAL DEPARTMENT
1633 BROADWAY
NEW YORK, NEW YORK, 10019

Principal Executive Office

DELOITTE TAX LLP
1633 BROADWAY
NEW YORK, NEW YORK, 10019

Registered Agent

NONE

NOTE: New York State does not issue organizational identification numbers.

[Search Results](#)

[New Search](#)

[Division of Corporations, State Records and UCC Home Page](#) [NYS Department of State Home Page](#)

SEYFARTH SHAW LLP
Kenneth D. Sulzer (State Bar No. 120253)
Andrew M. Paley (State Bar No. 149699)
Sheryl L. Skibbe (State Bar No. 199441)
Regina A. Musolino (State Bar No. 198872)
2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
Telephone: (310) 277-7200
Facsimile: (310) 201-5219
Email: ksulzer@seyfarth.com; apaley@seyfarth.com
sskibbe@seyfarth.com; rmusolino@seyfarth.com

Attorneys for Defendants
DELOITTE & TOUCHE (ICS) LLC and DELOITTE TAX LLP

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STEPAN MEKHITARIAN, an
individual, on behalf of all others
similarly situated,

Plaintiff,

v.

DELOITTE & TOUCHE (ICS), LLC, a
Delaware Limited Liability Company;
and DELOITTE TAX, LLP, a Delaware
Limited Liability Partnership; and DOES
1 THROUGH 50, inclusive,

Defendants.

Case No. CV 07-0412 DSF (MANx)

**NOTICE OF REMOVAL;
DECLARATIONS OF EDITH
GARWOOD, BARBARA
NEWMAN AND SHERYL L.
SKIBBE**

**[CLASS ACTION FAIRNESS ACT
OF 2005]**

TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HIS COUNSEL OF
RECORD:

PLEASE TAKE NOTICE that defendant Deloitte Tax LLP ("Deloitte Tax"
or "Defendant") files this Notice of Removal pursuant to 28 U.S.C. sections 1441
and 1446, asserting original federal jurisdiction under 28 U.S.C. section
1332(d)(2), to effect the removal of the above-captioned action, which was
originally commenced in the Superior Court of the State of California in and for
the County of Los Angeles. This Court has original jurisdiction over the action

1 pursuant to the Class Action Fairness Act of 2005 ("CAFA") for the following
2 reasons:

3 BACKGROUND

4 1. On or about December 13, 2006, STEPAN MEKHITARIAN
5 ("Plaintiff") filed a class action complaint against Deloitte & Touche (ICS) LLC,
6 and Deloitte Tax LLP, alleging claims for failure to pay overtime wages, failure to
7 pay waiting time penalties, and unfair competition on behalf of the putative class
8 of employees and former employees in the positions of Tax Senior and Tax
9 Associate (the "Complaint"). A true and correct copy of the Complaint is attached
10 hereto as Exhibit A.

11 TIMELINESS OF REMOVAL

12 2. The Complaint was served upon Defendant on December 18, 2006.
13 Sheryl L. Skibbe Declaration ("Skibbe Decl.") ¶ 2, Exhibit A. This Notice of
14 Removal is timely as it is filed within thirty days of the date the Complaint was
15 served upon Defendant. 28 U.S.C. § 1446(b). Defendants Deloitte Tax LLP and
16 Deloitte & Touche (ICS) LLC answered the Complaint in the state court on
17 January 17, 2007. Skibbe Decl. ¶ 3. A true and correct copy of the Answer is
18 attached hereto as Exhibit "B."

19 ORIGINAL JURISDICTION—CLASS ACTION FAIRNESS ACT

20 3. This Court has original jurisdiction of this action under CAFA,
21 codified in pertinent part at 28 U.S.C. § 1332(d)(2). As set forth below, this action
22 is properly removable, pursuant to 28 U.S.C. § 1441(a), in that the district court
23 has original jurisdiction over the action, because the aggregated amount in
24 controversy exceeds \$5,000,000, exclusive of interest and costs, and the action is a
25 class action in which at least one class member is a citizen of a state different from
26 that of Defendant. 28 U.S.C. §§ 1332(d)(2) & (d)(6). Furthermore, the number of
27 putative class members is greater than 100. 28 U.S.C. § 1332 (d)(5)(B).
28

Diverse Citizenship of the Parties

4. **Plaintiff's Citizenship.** Defendant is informed and believes, and on that basis alleges, that Plaintiff is currently a resident of either the State of California or the State of Massachusetts. To establish citizenship for diversity purposes, a natural person must be both (a) a citizen of the U.S., and (b) a domiciliary of one particular state. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Residence is *prima facie* evidence of domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). Defendant is informed and believes, and on that basis alleges, that Plaintiff was domiciled in California while he worked in Los Angeles County, as alleged in the Complaint, and, therefore, Plaintiff is, or was at the institution of this civil action, a citizen of California. See Ex. A, ¶¶ 1 & 3. Defendant is informed and believed that Plaintiff is currently residing in Massachusetts.

5. **Defendant's Citizenship.** Pursuant to 28 U.S.C. section 1332(d)(10), "For purposes of this subsection and section 1453 [28 USCS § 1453], an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized." Defendant is now, and at all times since this action commenced has been, a limited liability partnership organized under the laws of the state of Delaware. Barbara Newman Declaration ("Newman Decl.") ¶ 3. Additionally, Defendant's principal place of business is located in New York, New York. Newman Decl. ¶ 4.

6. The principal place of business is determined by using one of two tests. The "place of operations" test examines which state "contains a substantial predominance of corporate operations." *Industrial Tectonics, Inc. v. Aero Alley*, 912 F.2d 1090, 1092 (9th Cir. 1990). Courts in the Ninth Circuit analyze "a number of factors to determine if a given state contains a substantial predominance of corporate activity, including the location of employees, tangible property, production activities, sources of income, and where sales take place." *Tosco Corp.*

1 *v. Comm. For a Better Environment*, 236 F.3d 495, 500 (9th Cir. 2001). Another
2 relevant factor is the location of the defendant's executive and administrative
3 functions. *Arellano v. Home Depot U.S.A.*, 245 F. Supp. 2d 1102, 1107 (S.D. Cal.
4 2003).

5 7. The second test, the "nerve center test," locates a company's
6 "principal place of business in the state where the majority of its executive and
7 administrative functions are performed." *Tosco Corp.*, 236 F.3d at 500 (citing
8 *Industrial Tectonics*, 912 F.2d at 1092-93). The Ninth Circuit "applies the place of
9 operations test unless the [company's] activities do not substantially predominate
10 in any one state." *Tosco Corp.*, 236 F. 3d at 500. Where there is no substantial
11 predominance of operations in any one state, the nerve center test applies: "This
12 test is generally utilized when a corporation's activities are far flung and operations
13 are conducted in many states." *Arellano*, 245 F. Supp. 2d at 1106.

14 8. Defendant's activities are widely dispersed throughout the United
15 States. However, the company's "National Office," for purposes of performing
16 executive functions, is located in New York. Newman Decl., ¶ 5.

17 9. Because Defendant's business operations do not substantially
18 predominate in any one state, the "nerve center test" is the applicable test to
19 determine the company's principal place of business. Some relevant
20 considerations under this test include where the directors and owners meet and
21 live, where the executives live and work, where the administrative and financial
22 offices and records are located, where the "home office" is located, where policy
23 decisions are made, and where day-to-day control of the business is exercised. *See*
24 *Unger v. Del E. Webb Corp.*, 233 F. Supp. 713, 716 (ND Cal. 1964). In
25 Defendant's case, its "National Office" is located in New York. Newman Decl., ¶
26 5. Defendant's executive operations are managed from this location. Newman
27 Decl., ¶ 5.
28

1 10. From its National Office in New York, New York, Defendant
2 conducts such executive operations, including but not limited to, those relating to
3 firm-wide policies and procedures, legal affairs, and general operations of its tax
4 practice. Newman Decl., ¶ 7. Defendant's Chief Executive Officer maintains his
5 office in New York. Newman Decl., ¶ 6.

6 11. Defendant's principal place of business is located in New York, New
7 York. As a result, Defendant is not now, and was not at the time of the filing of
8 the Complaint, a citizen of either the state of California or the State of
9 Massachusetts within the meaning of the Acts of Congress relating to the removal
10 of cases.

11 Amount in Controversy

12 12. The claims of the individual members in a class action are aggregated
13 to determine if the amount in controversy exceeds the sum or value of \$5,000,000.
14 28 U.S.C. § 1332(d)(6). In addition, Congress intended for federal jurisdiction to
15 be appropriate under CAFA "if the value of the matter in litigation exceeds
16 \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the
17 defendant, and regardless of the type of relief sought (e.g., damages, injunctive
18 relief, or declaratory relief)." Senate Judiciary Committee Report, S. REP. 109-14,
19 at 49. Moreover, the Senate Judiciary Committee's Report on the final version of
20 CAFA makes clear that any doubts regarding the maintenance of interstate class
21 actions in state or federal court should be resolved in favor of federal jurisdiction.
22 S. REP. 109-14, at 49("[I]f a federal court is uncertain about whether 'all matters
23 in controversy' in a purported class action 'do not in the aggregate exceed the sum
24 or value of \$5,000,000,' the court should err in favor of exercising jurisdiction over
25 the case Overall, new section 1332(d) is intended to expand substantially
26 federal court jurisdiction over class actions. Its provisions should be read broadly,
27 with a strong preference that interstate class actions should be heard in a federal
28 court if properly removed by any defendant.").

13. The alleged amount in controversy in this class action, in the aggregate, exceeds \$5,000,000. The Complaint alleges that the putative class consists of “all persons who were employed in California by Defendants as Tax Associates [and Tax Seniors] during the relevant statutory period, who were paid on a salaried basis and worked in excess of eight (8) hours per day and/or in excess of forty (40) hours in one or more workweeks....” Ex. A, ¶¶ 4(a) & (b). Plaintiff further alleges each putative class member is owed “overtime wages in an amount in excess of \$25,000....” Ex. A, ¶¶ 16 & 22. Defendant employed more than 200 employees as either Tax Associates or Tax Seniors within the state of California during the relevant time period. Edith Garwood Declaration, ¶ 3. As such, the amount of overtime wages in controversy as alleged in the Complaint is at least \$5,000,000, the minimum requirement. In addition, Plaintiff has asserted class claims for waiting time penalties under California Labor Code section 203 and damages for unfair competition, which may further increase the amounts in controversy. Plaintiff also seeks attorneys’ fees.

14. Because diversity of citizenship exists, Plaintiff, being a citizen of either the State of California or the State of Massachusetts (and other putative class members presumably being citizens of the state of California), and the Defendant being a citizen of Delaware, with its principal place of business in the State of New York, and because the amount in controversy exceeds \$5,000,000, this Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332(d)(2). This action is therefore a proper one for removal to this Court pursuant to 28 U.S.C. § 1441(a).

VENUE

15. Venue lies in the Central District of this Court pursuant to 28 U.S.C. sections 1441, 1446(a) and 84(c)(2). This action originally was brought in the Superior Court of the State of California, County of Los Angeles. *See* Ex. A, ¶ 2.

NOTICE OF REMOVAL


16. This Notice of Removal will be promptly served on Plaintiff and filed with the Clerk of the Superior Court of the State of California in and for the County of Los Angeles.

17. In compliance with 28 U.S.C. section 1446(a), true and correct copies of all "process, pleadings, and orders" are attached hereto as Exhibits A and B.

WHEREFORE, Defendant requests that the above action pending before the Superior Court of the State of California for the County of Los Angeles be removed to the United States District Court for the Central District of California, Western Division.

DATED: January 17, 2007

SEYFARTH SHAW LLP

By 
Sheryl D. Skibbe
Attorneys for Defendant
DELOITTE TAX LLP

DECLARATION OF EDITH GARWOOD

I, Edith Garwood, declare as follows:

1. I am a Deputy Controller – Director, U.S. Firms’ Payroll for Deloitte Services LP. Deloitte Services LP contracts with defendant Deloitte Tax LLP (“Deloitte Tax”) to provide payroll services, and I have been employed in that specific position since August, 2005, and have been the head of payroll services since March, 1994. I have personal knowledge of the matters stated herein, based on Deloitte Tax’s business records as set forth below, and if called and sworn as a witness, I could and would competently testify as set forth herein.

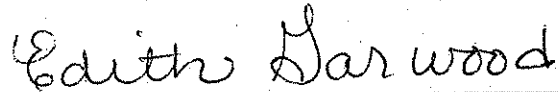
2. For purposes of making this declaration, Deloitte Tax requested that I obtain information and review business records concerning Deloitte Tax’s operating activities within the State of California. As part of obtaining this information, I consulted such business records which included Deloitte Tax’s payroll database of its employees. Accessing such information is a part of my ordinary duties as Deputy Controller – Director, U.S. Firms’ Payroll. The information I compiled (as set forth in this declaration, below) was taken from records of acts or events made at or near the time by, or from information transmitted by, a person with personal knowledge, and such records were and are made and maintained in Deloitte Service LP’s regular practice and in the course of Deloitte Service LP’s regularly conducted business activity. As Deputy Controller – Director, U.S. Firms’ Payroll for Deloitte Services LP, I am one of the custodians of such records and information that pertain to the payroll for Deloitte Tax.

3. As of December 13, 2006, Deloitte Tax employed more than 200 individuals in the positions described in Plaintiff Stepan Mekhitarian’s Complaint pertaining to the alleged putative class members, within the State of California.

0008

DECLARATION OF EDITH GARWOOD

1 I declare under penalty of perjury under the laws of the United States of
2 America and the State of California that the foregoing is true and correct and that
3 this Declaration was executed this 16th day of January 2007, in Hermitage,
4 Tennessee.

5 

6 Edith Garwood
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DECLARATION OF BARBARA NEWMAN

I, Barbara Newman, declare as follows:

1. I am Partner In Charge - Partners Financial Services and U.S. Firm's Taxes for Deloitte & Touche USA LLP and I have been in that position since June 1, 2003. Defendant Deloitte Tax LLP ("Deloitte Tax") is a subsidiary of Deloitte & Touche USA LLP. In my position, I am familiar with and have personal knowledge of Deloitte Tax's organization as a limited liability partnership and its general business affairs. As such, I have personal knowledge of the matters stated herein and if called and sworn as a witness, I could and would competently testify as set forth herein.

2. In addition to having personal knowledge, as part of my normal business responsibilities, of Deloitte Tax's organization as a limited liability partnership, I also have obtained information and reviewed business records concerning the organization of Deloitte Tax and the operations of that entity. The information compiled (as set forth in this declaration, below) is based on my personal knowledge as well as the records maintained in Deloitte Tax's regular practice and in the course of Deloitte Tax's regularly conducted business activity. As Partner In Charge - Partners Financial Services and U.S. Firm's Taxes at Deloitte & Touche USA LLP, I am one of the custodians of such records and information that pertain to the business operations of Deloitte Tax.

3. Deloitte Tax LLP is a limited liability partnership organized under the laws of the State of Delaware and was so organized as of December 13, 2006.

4. Deloitte Tax's principal place of business is located in the State of New York.

5. Deloitte Tax maintains its National Office at 1633 Broadway, New York, New York, 10019-6754. Deloitte Tax's executive operations are managed from this location.

6. Deloitte Tax's Chief Executive Officer maintains his offices at 1633 Broadway, New York, New York, 10019-6754.

7. From its National Office in New York, New York, Deloitte Tax conducts such executive operations, including but not limited to, those relating to firm-wide policies and procedures, legal affairs, and general operations of its tax practice.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this Declaration was executed this 17th day of January 2007, at Hermitage, Tennessee.

Barbara Newman

Barbara Newman

DECLARATION OF SHERYL L. SKIBBE

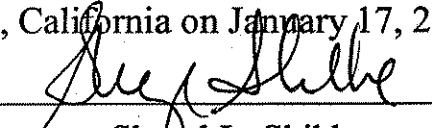
I, Sheryl L. Skibbe, declare as follows:

1. I am an attorney with Seyfarth Shaw LLP, attorneys of record for Defendant Deloitte Tax LLP in this action. I make this declaration on the basis of my own, first-hand knowledge and, if called upon to do so, could and would testify to the following facts:

2. Attached as Exhibit "A" is a true and correct true and correct copy of the Complaint filed in this action in the Superior Court for the State of California, County of Los Angeles on or about December 15, 2006. Deloitte Tax LLP accepted service on December 18, 2006.

3. Attached as Exhibit "B" is a true and correct true and correct copy of the Answer filed in this action in the Superior Court for the State of California, County of Los Angeles on or about January 17, 2007.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed in Los Angeles, California on January 17, 2007.


Sheryl L. Skibbe

CT CORPORATION
A WoltersKluwer Company

**Service of Process
Transmittal**
12/18/2006
Log Number 511738103

TO: Barbara Newman
ICS Deloitte
4022 Sells Drive
Hermington, TN, 37076-

RE: Process Served in California

FOR: Deloitte & Touche (ICS) L.L.C. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Stepan Mekhitarian, an individual, on behalf of all others similarly situated,
Plf. vs. Deloitte & Touche (ICS), LLC, etc., et al., Dfts.
Name discrepancy noted.

DOCUMENT(S) SERVED: Summons, Cover Sheet, Addendum, Notice, Attachment(s), Stipulation Form, Class
Action Complaint

COURT/AGENCY: Los Angeles County, Los Angeles, Superior Court of California, CA
Case # BC383334

NATURE OF ACTION: Employee Litigation - Failure to Pay Overtime Compensation

ON WHOM PROCESS WAS SERVED: C T Corporation System, Walnut Creek, CA

DATE AND HOUR OF SERVICE: By Process Server on 12/18/2006 at 14:05

APPEARANCE OR ANSWER DUE: Within 30 days after service

ATTORNEY(S) / SENDER(S): Ammond Marcarian
Law Offices of Ammond Marcarian
15260 Ventura Boulevard
Penthouse Suite 2250
Sherman Oaks, CA, 91403
818-995-8787

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex Priority Overnight, 798067879840

SIGNED:
PER:
ADDRESS:
TELEPHONE:

C T Corporation System
Diane Christman
818 West Seventh Street
Los Angeles, CA, 90017
213-337-4615

Page 1 of 1 / MV

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of the package only, not of its contents.

EXHIBIT A

0013

SUMMONS (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

DELOITTE & TOUCHE (ICS), LLC, a Delaware Limited Liability Company; and DELOITTE TAX, LLP, a Delaware Limited Liability Partnership; and DOES 1 through 50 inclusive

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

STEPAN MEKHITARIAN, an individual, and on behalf of others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

DEC 13 2008

John A. Clark, Executive Officer/Clerk
By [Signature] Deputy
D. Giles

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of the State of California
111 N. Hill Street

CASE NUMBER:
(Número del Caso):

BC363334

Los Angeles, CA 90012

Central

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Armond Marcarian, Esq.

Law Offices of Armond Marcarian

15260 Ventura Boulevard

Sherman Oaks, CA 91403

DATE: DEC 13 2008

(Fecha)

John A. Clark

Clerk, by

(Secretario)

DERIAN GILES

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify):

under: ☒ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☐ other (specify):

- ☒ by personal delivery on (date):

☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.90 (authorized person)

Page 1 of 1

COPY

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Armond Marcarian, Esq. Law Offices of Armond Marcarian 15260 Ventura Boulevard Penthouse Suite 2250 Sherman Oaks, CA 91403 TELEPHONE NO.: (818) 995-8787 FAX NO.: (818) 995-8817 ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY CONFORMED COPY OF ORIGINAL FILED Los Angeles Superior Court DEC 13 2006 John A. Clark, Executive Officer/Clerk By <u>D. Giles</u> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central		
CASE NAME: Stepan Mekhitarian v. Deloitte & Touche (ICS), LLC		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)		CASE NUMBER: 06365554 JUDGE: DEPT:

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DPD/W (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DPD/W (23) Non-P/DPD/W (Other) Tort <input type="checkbox"/> Business tort/unfair business practices (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DPD/W tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	--	---

2. This case ☐ is ☒ is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve. | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Type of remedies sought (check all that apply):

- | | | |
|---|--|--------------------------------------|
| a. <input checked="" type="checkbox"/> monetary | b. <input checked="" type="checkbox"/> nonmonetary; declaratory or injunctive relief | c. <input type="checkbox"/> punitive |
|---|--|--------------------------------------|

4. Number of causes of action (specify):

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case (You may use form CM-015).

Date: December 11, 2006

Armond Marcarian, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SHORT TITLE STEPAN MEKHITARIAN V. DELOITTE & TOUCHE

CASE NUMBER

BC363334

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☒ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 5-6 ☐ HOURS/ ☒ DAYS.

Item II. Select the correct district and courthouse location (4 steps - If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (See Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1., 2., 4.
Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress		1., 2., 3.	
<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death		1., 2., 4.	
Other Property	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
	Intellectual Property (19)	<input type="checkbox"/> A6016 Intellectual Property	2., 3.

SHORT TITLE: STEPAN MEKHITARIAN v. DELOITTE & TOUCHE		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input checked="" type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/Warranty (08) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach-Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute (not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer - Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE: STEPAN MEKH

RIAN v. DELOITTE & TOUCHE

CASE NUMBER

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ / Judicial Review	2.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 8.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 3.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 3., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership/Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

IV 109 03-04 (DRAFT Rev. 01/06)
ISC ApprovedCIVIL CASE COVER SHEET ADDENDUM
AND STATEMENT OF LOCATIONLASC, rule 2.0
Page 3 of 4

SHORT TITLE: STEPAN MEKHITARIAN v. DELOITTE & TOUCHE	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE			ADDRESS:
<input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			350 S. GRAND, SUITE 200
CITY:	STATE:	ZIP CODE:	
LOS ANGELES	CA	90071	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the LOS ANGELES SUPERIOR COUNTY courthouse in the CENTRAL District of the Los Angeles Superior Court (Code of Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: DECEMBER 11, 2006



(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING DOCUMENTS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form CIV 109, 03-04 (use latest revision)
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form 982(a)(27), if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

**NOTICE OF CASE ASSIGNMENT
LOS ANGELES SUPERIOR COURT**

CASE NUMBER

BC363334THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

Your case is assigned for all purposes to the judicial officer indicated below. There is additional information on the reverse side of this form.

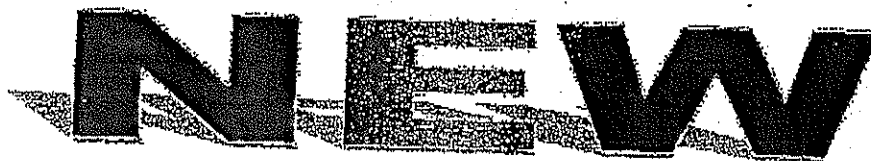
ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Gregory Alarcon	36	410	Hon. William Highberger	32	406
Hon. Alice E. Alton	28	318	Hon. Ernest Hiroshige	54	512
Hon. Conrad Aragon	49	509	Hon. Jane Johnson	56	514
Hon. Helen I. Bendix	18	308	Hon. Elizabeth Allen White	48	506
Hon. Elihu M. Berle	42	416	Hon. Malcolm H. Mackey	55	515
Hon. Tricia Ann Bigelow	23	315	Hon. Jon M. Mayeda	72	731
Hon. Soussan Bruguera	71	729	Hon. Rita Miller	16	306
Hon. Susan Bryant-Deason	52	510	Hon. David L. Minning	61	632
Hon. James C. Chalfant	13	630	Hon. Aurelio Munoz	47	507
Hon. Victoria Chaney	324	CCW	Hon. Mary Ann Murphy	25	317
Hon. Judith C. Chirlin	89	532	Hon. Joanne O'Donnell	37	413
Hon. Ralph W. Dau	57	517	Hon. Victor H. Person	39	415
Hon. Maureen Duffy-Lewis	38	412	Hon. Mel Recana	45	529
Hon. James R. Dunn	26	316	Hon. Andria K. Richey	31	407
Hon. Lee Edmon	68	617	Hon. Teresa Sanchez-Gordon	74	735
Hon. William F. Fahey	78	730	Hon. James E. Satt	40	414
Hon. Irving Feffer	51	511	Hon. John P. Shook	53	513
Hon. Edward A. Ferns	69	621	Hon. Ronald M. Sohigian	41	417
Hon. Kenneth R. Freeman	64	601	Hon. Michael L. Stern	62	600
Hon. Haley J. Fromholz	20	310	Hon. Mary Thornton House	17	313
Hon. Richard Fruin	15	307	Hon. Rolf M. Trev	58	516
Hon. Terry Green	14	300	Hon. John Shepard Wiley Jr.	50	508
Hon. Elizabeth A. Grimes	30	400		19	311
Hon. Paul Gutman	34	408	Hon. George Wu	33	409
Hon. Robert L. Hess	24	314		35	411
	3	224	OTHER		

en to Plaintiff of record on _____

John A. Clarke, Executive Officer/Clerk

CLERK

DEPUTY



from the
LOS ANGELES SUPERIOR COURT
ADR DEPARTMENT

If you have a general jurisdiction case involving one of these 6 subject matter areas:

- commercial
- employment
- medical malpractice
- real estate
- trade secrets
- unfair competition

***Your case may be eligible for the court's pilot
Early Neutral Evaluation (ENE) program.***

- ♦ **ENE can reduce litigation time and costs and promote settlement.**
- ♦ ENE is an informal process that offers a non-binding evaluation by an experienced neutral lawyer with expertise in the subject matter of the case. After counsel present their claims and defenses, the neutral evaluates the case based on the law and the evidence.
- ♦ **ENE is voluntary and confidential.**
- ♦ The benefits of ENE include helping to clarify, narrow or eliminate issues, identify areas of agreement, offer case-planning suggestions and, if requested by the parties, assist in settlement.
- ♦ **The first three (3) hours of the ENE session are free of charge.**

See back for a list of participating pilot courthouses and departments.

For additional ENE information, visit the Court's web site at www.lasuperiorcourt.org/adr

PARTICIPATING PILOT COURTHOUSES:

(General Jurisdiction Case Only)

- **Chatsworth**
- **Pomona**
- **Santa Monica**
- **Van Nuys**
- **Stanley Mosk** (Departments listed below only.)

Department 15
Department 16
Department 28
Department 30
Department 31
Department 32
Department 38
Department 42
Department 47
Department 50
Department 52
Department 55
Department 56
Department 68
Department 71
Department 89

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
STIPULATION TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION (ADR)			CASE NUMBER:

The undersigned parties stipulate to participate in an Alternative Dispute Resolution (ADR) process in the above-entitled action, as follows:

- ☐ Mediation
☐ Non-Binding Arbitration
☐ Binding Arbitration
☐ Early Neutral Evaluation
☐ Settlement Conference
☐ Other ADR Process (describe): _____

Dated: _____

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

☐ Additional signature(s) on reverse

STIPULATION TO PARTICIPATE IN
ALTERNATIVE DISPUTE RESOLUTION (ADR)

Cal. Rules of Court, rule 201.9
Page 1 of 2

Short Title	Case Number
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Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
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Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

**LOS ANGELES COUNTY
DISPUTE RESOLUTION PROGRAMS ACT (DRPA) CONTRACTORS**

The following organizations provide mediation services under contract with the Los Angeles County Department of Community & Senior Services. Services are provided to parties in any civil case filed in the Los Angeles County Superior Court. Services are not provided under this program to family, probate, traffic, criminal, appellate, mental health, unlawful detainer/eviction or juvenile court cases.

Asian-Pacific American Dispute Resolution Center
(213) 250-8190
(Spanish & Asian languages capability)

California Academy of Mediation Professionals
(818) 377-7250

Center for Conflict Resolution
(818) 380-1840

Inland Valleys Justice Center
(909) 397-5780
(Spanish language capability)

Office of the Los Angeles City Attorney Dispute Resolution Program
(213) 485-8324
(Spanish language capability)

Los Angeles County Bar Association Dispute Resolution Services
toll free number 1-877-4Resolve (737-6583) or (213) 896-6533
(Spanish language capability)

Los Angeles County Department of Consumer Affairs
(213) 974-0825
(Spanish language capability)

The Loyola Law School Center for Conflict Resolution
(213) 736-1145
(Spanish language capability)

Martin Luther King Legacy Association Dispute Resolution Center
(323) 290-4132
(Spanish language capability)

City of Norwalk
(562) 929-5603

DRPA Contractors do not provide legal advice or assistance, including help with responding to summonses. Accessing these services does not negate any responsibility you have to respond to a summons or appear at any set court date. See the reverse side of this sheet for information on the mediation process and obtaining legal advice.

THIS IS A TWO-SIDED DOCUMENT.

<p>What is the goal of mediation?</p> <p>The goal is to assist the parties in reaching a mutually acceptable agreement or understanding on some or all of the issues. The parties jointly become the primary decision maker in how to resolve the issues as opposed to the traditional judge and/or jury system.</p>	
<p>Do I need an attorney for this?</p> <p>While it is recommended to have an attorney and/or receive legal advice before the mediation starts, you are not required to have representation. If you do have an attorney, they may participate in the mediation with you.</p>	
<p>How long does it take?</p> <p>Face-to-face mediations generally last one to three hours. Telephone conciliations, in which the parties do not meet face to face, vary from a few days to several weeks. Much depends on the number of parties involved and the complexities of the issues. When the mediation takes place depends on parties scheduling availability.</p>	
<p>A Mediator helps parties...</p> <ul style="list-style-type: none"> ♦ Have productive discussions ♦ Avoid or break impasses ♦ Defuse controversy ♦ Generate options that have potential for mutual gain ♦ Better understand each other's concerns and goals ♦ Focus on their interests rather than their positions 	<p>A Mediator does not...</p> <ul style="list-style-type: none"> ♦ Provide advice or opinions ♦ Offer legal information ♦ Make decisions for parties ♦ Represent or advocate for either side ♦ Judge or evaluate anyone or anything ♦ Conduct research ♦ "Take Sides"
<p>What does it cost?</p> <p>The first three hours of any mediation are free. Thereafter, charges are based on income or revenue. All fees are waived for low-income individuals.</p>	<p>Legal Advice/Information</p> <p>If you want to retain an attorney, a list of state certified referral services is at courtinfo.ca.gov which also has an on-line self help legal center.</p> <p>Self-Help Legal Access Centers are at the Inglewood, Palmdale, Pomona, and Van Nuys courthouses. nls-la.org and lafla.org</p> <p>Court Personnel can answer non-legal questions (forms, fees, fee waivers). lasuperiorcourt.org</p> <p>Low-income individuals may qualify for help from non-profit legal organizations. Court Personnel and DRPA contractors have such listings.</p>
<p>What is the difference between the contractors listed and the Superior Court ADR Office?</p> <p>The services offered by the contractors listed may be accessed immediately. Those offered by the Superior Court ADR Office, also a DRPA contractor, may not be accessed by parties until a court appearance, or at the directive of the judge assigned to the case.</p>	
<p align="center">Dispute Resolution Programs Act (DRPA) Grants Administration Office (213) 738-2621 (The DRP Office is not a Superior Court Office. Consult your phone directory to locate the number of the Court Office on your summons.)</p>	

THIS IS A TWO-SIDED DOCUMENT.

LOS ANGELES SUPERIOR COURT
CIVIL ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAMS
 [CRC 201.9(c) Information about Alternative Dispute Resolution]

The plaintiff shall serve a copy of the ADR Information package on each defendant along with the complaint.

ADR PROGRAMS

"Alternative Dispute Resolution (ADR)" is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes such as arbitration, mediation, early neutral evaluation (ENE), and settlement conferences, are less formal than court and provide opportunities for litigants to reach an agreement using a problem-solving approach rather than the more adversarial approach of litigation.

MEDIATION A neutral third party called a "mediator" helps participants in the dispute create their own resolution. The mediator helps facilitate a discussion in which the parties reach a mutually agreed upon settlement. Therefore, mediation allows for more creative resolutions to disputes than other ADR processes.

The Court Mediation Program is governed by Code of Civil Procedure sections 1775-1775.15, California Rules of Court, Rules 1620-1622 and 1630-1639, Evidence Code sections 1115-1128, and Los Angeles Superior Court Rules, Chapter 12.

ARBITRATION A neutral third party called an "arbitrator" listens to each side in the dispute present its case. The arbitrator, who is an attorney, issues a decision based on the evidence. Although evidence is presented, arbitration is a less formal process than litigation. The decision is non-binding unless the parties agree in writing to binding arbitration.

The Court Arbitration Program is governed by Code of Civil Procedure sections 1141.10-1141.31, California Rules of Court, Rules 1600-1618, and Los Angeles Superior Court Rules, Chapter 12.

ENE A neutral third party called an "evaluator" will provide the parties and their counsel, on a voluntary basis and in a confidential session, the opportunity to make summary presentations of their claims and defenses, including key evidence. After hearing the presentations, the evaluator, who is an experienced lawyer with subject-matter expertise, offers a non-binding evaluation.

The evaluator will also help clarify, narrow or eliminate issues, identify areas of agreement, offer case-planning suggestions, and, if requested by parties, settlement assistance. Although settlement is not the primary goal of ENE, the ENE process can reduce litigation time and costs and promote settlement.

The Court ENE Program is governed by Los Angeles Superior Court Rules, Chapter 12.

SETTLEMENT CONFERENCE A neutral third party called a "settlement officer," who is also a retired judge, assists the parties in negotiating their own settlement and may evaluate the strengths and weaknesses of the case.

JURISDICTIONAL LIMITATIONS

MEDIATION, ARBITRATION & ENE Any case in which the amount in dispute is between \$25,000-\$50,000 per plaintiff, and was not previously referred to the Court ADR Program, can be sent to the Court ADR Program for mediation, arbitration, or ENE by stipulation, election by plaintiff or order of the court.

Parties may voluntarily request or initiate a mediation or arbitration proceeding, regardless of the amount in dispute.

SETTLEMENT CONFERENCE Any case, regardless of the amount in dispute, may be ordered to a settlement conference. There is no monetary limit.

REFERRAL INFORMATION

After the Court determines the suitability of a case for ADR, the Court directs the parties to the ADR Department to initiate the ADR process. Once the parties have completed the ADR intake forms, a Neutral may be selected.

NEUTRAL SELECTION

Parties may select a mediator or arbitrator from the Court Party Pay Panel or Pro Bono Panel or may hire someone privately, at their discretion. Parties are assigned to a settlement officer by court staff.

COURT ADR PANELS

PARTY PAY PANEL

The Party Pay Panel consists of mediators and arbitrators who have achieved a specified level of experience in court-connected cases. The parties (collectively) may be charged \$150.00 per hour for the first three hours of hearing time. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the mediator or arbitrator if the parties consent in writing.

PRO BONO PANEL

The Pro Bono Panel consists of trained mediators and arbitrators who have not yet gained the experience to qualify for the Party Pay Panel and experienced mediators and arbitrators who make themselves available pro bono. Mediators and arbitrators donate their time to the courts as a way of supporting the judicial system. It is the policy of the Court that all pro bono volunteer mediators and arbitrators provide three hours hearing time per case. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the mediator or arbitrator if the parties consent in writing.

ENE

The Court ENE Panel consists of experienced lawyers who have been trained to serve as neutral evaluators. The evaluators provide preparation time and three hours hearing time per case at no charge. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the evaluator if the parties consent in writing.

PRIVATE NEUTRAL

The market rate for private neutrals can range from \$200-\$1,000 per hour.

For additional information, visit the Court ADR web application at www.lasuperiorcourt.org (click on ADR).

Partially Funded by the Los Angeles County Dispute Resolution Program

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Los Angeles Superior Court

DEC 13 2008

John A. Clarke, Executive Officer/Clerk
By B. Giles Deputy

1 WILLIEM E. HARRIS (SB 76706)
2 MATTHEW A. KAUFMAN (166986)
3 HARRIS & KAUFMAN
4 15260 VENTURA BLVD. SUITE 2250
5 SHERMAN OAKS, CALIFORNIA 91403
6 TELEPHONE: (818) 990-1966
7 FACSIMILE: (818) 990-1966

8 ARMOND MARCARIAN, ESQ. (SEN 213883)
9 LAW OFFICES OF ARMOND MARCARIAN
10 15260 VENTURA BOULEVARD
11 PENTHOUSE SUITE 2250
12 SHERMAN OAKS, CALIFORNIA 91403
13 TELEPHONE: (818) 995-8787
14 FACSIMILE: (818) 995-8817
15 E-MAIL: Armond@Marcarianlaw.US

16 Attorneys for Plaintiff Stepan Mekhitarian, and all individuals similarly situated

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **FOR THE COUNTY OF LOS ANGELES-UNLIMITED JURISDICTION**
19 **BC363334**

20 STEPAN MEKHITARIAN, an individual, on)
21 behalf of all others similarly situated,)

Case No.:

22 Plaintiff,

CLASS ACTION

23 vs.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

24 DELOITTE & TOUCHE (ICS), LLC, a)
25 Delaware Limited Liability Company; and)
26 DELOITTE TAX, LLP, a Delaware Limited)
27 Liability Partnership; and DOES 1)
28 THROUGH 50 inclusive,)

Defendants.

1. FAILURE TO PAY OVERTIME
COMPENSATION IN VIOLATION
OF CALIFORNIA LABOR CODE §
1194;
2. CLAIM FOR STATUTORY
WAITING TIME PENALTIES FOR
FAILURE TO PAY WAGES
PURSUANT TO CALIFORNIA
LABOR CODE §203; and
3. UNLAWFUL BUSINESS
PRACTICES IN VIOLATION OF
CALIFORNIA BUSINESS &
PROFESSIONS CODE §§17200, ET
SEQ..

COPY

1 Plaintiff STEPAN MEKHITARIAN ("Plaintiff"), individually and on behalf of all other
 2 similarly situated individuals, alleges as follows against the above-named defendants:

3 I.
 4 THE PARTIES AND VENUE

5 1. The Named Plaintiff. The Plaintiff is an individual over the age of 18
 6 years. Plaintiff was employed by the above-named defendants from on or about May 15, 2002
 7 through on or about January 15, 2005, and held the positions of a Tax Associate, or as a Tax
 8 Senior throughout his employment with defendants.
 9

10 2. Defendants.

11 (a) Plaintiff is informed and believes and thereon alleges, that defendant DELOITTE
 12 & TOUCHE (ICS), LLC, ("DELOITTE & TOUCHE") was, and is, a limited liability company
 13 organized under the laws of the State of Delaware.
 14

15 (b) Plaintiff is informed and believes and thereon alleges, that defendant DELOITTE
 16 TAX, LLP ("DELOITTE TAX") was, and is, a limited liability partnership organized under the
 17 laws of the State of Delaware.

18 (c) Hereinafter in the Complaint, unless otherwise specified, reference to
 19 DELOITTE & TOUCHE, DELOITTE TAX, LLP, Defendant or Defendants shall refer to all
 20 Defendants, including Does 1 through 50 and each of them.

21 (d) Plaintiff is unaware of the true names and capacities of Defendants sued herein as
 22 DOES 1 through 50, inclusive, and for that reason sues said Defendants by such fictitious names.
 23 Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named
 24 Defendants is responsible in some manner for, and proximately caused, the harm and damages
 25 alleged herein below. Plaintiff will file and serve an amendment to this Complaint alleging the
 26 true names and capacities of said fictitiously named Defendants if and when such true names and
 27 capacities become known to Plaintiff.
 28

1 (e) Plaintiff is informed and believes and thereon alleges, that each of the Defendants
 2 named herein acted as the employee, agent, partner, alter-ego and/or joint venturer of each of the
 3 other Defendants named herein, and, in doing the acts and in carrying out the wrongful conduct
 4 alleged herein, each of said Defendants acted within the scope of said relationship and with the
 5 permission, consent and ratification of each of the other Defendants named herein.

6 (f) At all times mentioned herein, one of the primary businesses of DELOITTE &
 7 TOUCHE, DELOITTE TAX and Defendants DOES 1 through 50 was the provision of
 8 accounting services for their clients, including but not limited to, preparation of tax returns and
 9 other financial documents. Said business was open to the general public in numerous counties of
 10 the State of California, including the County of Los Angeles.

11 3. Venue. Throughout his employment with Defendants, Plaintiff was
 12 employed at Defendants' offices located at 350 S. Grand Ave., Ste. 200, Los Angeles, County of
 13 Los Angeles, California 90071.

14 II. 15 CLASS ACTION ALLEGATIONS 16

17 4. Plaintiff brings this action, pursuant to California Code of Civil Procedure section
 18 382, against all Defendants on his behalf and all persons similarly situated in the State of
 19 California. The classes that Plaintiff represents are comprised of:
 20

21 (a) all persons who were employed in California by Defendants as Tax Associates during
 22 the relevant statutory period, who were paid on a salaried basis and worked in excess of eight (8)
 23 hours per day and/or in excess of forty (40) hours in one or more workweeks; and
 24

25 (b) all persons who were employed in California by Defendants as Tax Seniors during the
 26 relevant statutory period, who were paid on a salaried basis and who worked in excess of eight
 27 (8) hours per day and/or in excess of forty (40) hours in one or more workweeks.
 28

1 5. All members of the putative classes described above have had their rights under
2 the California Labor Code, and California Business & Professions Code violated by Defendants'
3 employment practices.

4
5 6. Ascertainable Class. The proposed plaintiff class described at Paragraph 4,
6 above, is ascertainable. Members of the plaintiff class can be readily identified from personnel
7 files and computer databases maintained by Defendants and from payroll and other records
8 maintained by the Defendants. The litigation of the questions of fact and law involved in this
9 action will resolve the rights of all members of the class and hence will have a binding effect on
10 all class members. The class is numerous and joinder of all class members is impracticable due
11 to both a reluctance of class members to sue their current or former employer and relatively
12 small monetary recovery for each class member in comparison to the costs associated with
13 separate litigation.

14
15 7. Community of Interest. The proposed class has a well-defined community of
16 interest in the questions of fact and law to be litigated. The common questions of law and fact
17 are predominant with respect to the liability issues, relief issues and anticipated affirmative
18 defenses. The named plaintiff has claims typical of members of both classes. The named
19 plaintiff can fairly and adequately represent and protect the interests of the classes in that there is
20 no conflict between his interests and the interests of other class members. This action is not
21 collusive, the named plaintiff and his counsel have the resources to litigate this action, and
22 counsel have experience and ability required to prosecute this case as a class action.

23
24 8. Superiority of Class Adjudication. The certification of a class in this action is
25 superior to the litigation of a multitude of cases by members of the putative class. Class
26 adjudication will conserve judicial resources and will avoid the possibility of inconsistent
27
28

1 rulings. Moreover, there are class members who are unlikely to join or bring an action due to,
 2 among other reasons, their reluctance to sue their current employer and/or their inability to afford
 3 a separate action. Finally, equity dictates that all persons who stand to benefit from the relief
 4 sought herein should be subject to the lawsuit and hence subject to an order spreading the costs
 5 of litigation among the class members in relationship to the benefits received.
 6

7 DEFENDANTS' UNLAWFUL POLICIES AND PRACTICES

8 9. Throughout the statutory periods alleged herein, Industrial Welfare Commission,
 9 Wage Order No. 4-2001, "Professional, Technical, Clerical, Mechanical and Similar
 10 Occupations", as amended, contained in Title 8 of the California Code of Regulations
 11 (hereinafter "Wage Order"), applied to Plaintiff and to each class member in his or her
 12 employment with Defendants.
 13

14 10. Throughout the statutory periods alleged herein, neither Plaintiff nor any other
 15 person employed by Defendants in the State of California in the position of a Tax Associate or a
 16 Tax Senior was exempt from the overtime provisions of California law. Defendants, however,
 17 followed a policy and practice of classifying and treating their Tax Associates and their Tax
 18 Seniors employed in California, including Plaintiff and the other class members similarly
 19 situated, as "exempt" employees as that term is defined in the Wage Order, despite the fact that
 20 Defendants failed to employ Plaintiff and the class members primarily in an administrative,
 21 executive or professional capacity as those terms are defined by the Wage Order.
 22

23 11. Throughout the statutory periods alleged herein, Defendants required their Tax
 24 Associates and Tax Seniors employed in California, as a condition of maintaining their
 25 employment with Defendants, to regularly work numerous overtime hours in excess of eight (8)
 26 hours per day and/or forty (40) hours per week. Although Defendants should have compensated
 27 said Tax Associates and Tax Seniors at the rate of one and one-half (1½) times their regular
 28

1 hourly wage for all hours worked in excess of eight (8) hours per workday or forty (40) hours per
 2 workweek and double their regular hourly wage for all hours worked in excess of twelve (12)
 3 hours per workday or in excess of eight (8) hours on the seventh workday of the week during the
 4 alleged statutory periods, they were instead compensated by a straight annual salary, regardless
 5 of the number of hours worked.
 6

7 III.

8 FIRST CAUSE OF ACTION

9 (Class Action Against All Defendants by Plaintiff, on Behalf of All Other Tax Associates
 Similarly Situated, For Failure to Pay Overtime Wages)

10 12. Plaintiff incorporates by reference each and every allegation set forth in
 11 paragraphs I through 11, as if set forth in full herein.

12 13. At all relevant times herein, California Labor Code section 1194 and the Wage
 13 Order applied to Plaintiff and to each class member in his or her employment, and provided for
 14 payment of an overtime premium of not less than one and one-half (1½) times the employee's
 15 regular rate of pay for all hours worked in excess of eight (8) hours per workday or forty (40)
 16 hours per workweek, and two (2) times the employee's regular rate of pay for all hours worked
 17 in excess of twelve (12) hours per workday or in excess of eight (8) hours on the seventh
 18 workday of the week.
 19
 20

21 14. Defendants possess or should possess the exact information regarding the number
 22 of hours worked by Plaintiff and each class member for the relevant statutory period.

23 15. Plaintiff brings this action, pursuant to California Code of Civil Procedure section
 24 382, against all Defendants on behalf of himself and all persons similarly situated in California.
 25 The class which Plaintiff represents is comprised of all persons who were employed in California
 26 by Defendants as Tax Associates during the relevant statutory period, who were paid on a
 27 salaried basis and worked in excess of eight (8) hours per day and/or in excess of forty (40) hours
 28

1 in one or more workweeks. Plaintiff seeks against Defendants for each class member the balance
 2 of all unpaid wages, with interest thereon, pursuant to California Labor Code section 1194 for
 3 uncompensated overtime pay for the applicable statutory period.
 4

5 16. As a direct and proximate result of Defendants' violation of the overtime
 6 provisions of the California Labor Code section 1194 and the Wage Order, there is due and
 7 owing to Plaintiff and to each class member overtime wages in an amount in excess of \$25,000
 8 to be established at the time of trial.
 9

10 17. Pursuant to California Labor Code section 1194, Plaintiff seeks on his behalf and
 11 on behalf of each class member, reasonable attorney's fees and interest on unpaid wages, and
 12 costs of suit.
 13

14 **IV.**
SECOND CAUSE OF ACTION
 15 **(Class Action Against All Defendants by Plaintiff, on Behalf of All Other Tax Seniors**
 16 **Similarly Situated, For Failure to Pay Overtime Wages)**

17 18. Plaintiff incorporates by reference each and every allegation set forth in
 18 paragraphs 1 through 11, as if set forth in full herein.
 19

20 19. At all relevant times herein, California Labor Code section 1194 and the Wage
 21 Order applied to Plaintiff and to each class member in his or her employment, and provided for
 22 payment of an overtime premium of not less than one and one-half (1½) times the employee's
 23 regular rate of pay for all hours worked in excess of eight (8) hours per workday or forty (40)
 24 hours per workweek, and two (2) times the employee's regular rate of pay for all hours worked
 25 in excess of twelve (12) hours per workday or in excess of eight (8) hours on the seventh
 26 workday of the week.
 27

28 20. Defendants possess, or should possess, the exact information regarding the
 number of hours worked by Plaintiff and each class member for the relevant statutory period.

21. Plaintiff brings this action, pursuant to California Code of Civil Procedure section 382, against all Defendants on behalf of himself and all persons similarly situated in California. The class which Plaintiff represents is comprised of all persons who were employed in California by Defendants as Tax Seniors during the relevant statutory period, who were paid on a salaried basis and who worked in excess of eight (8) hours per day and/or in excess of forty (40) hours in one or more workweek. Plaintiff seeks against Defendants for each class member the balance of all unpaid wages, with interest thereon, pursuant to California Labor Code section 1194 for all uncompensated overtime pay, for the applicable statutory period.

22. As a direct and proximate result of Defendants' violation of the overtime provisions of the California Labor Code section 1194 and the Wage Order, there is due and owing to Plaintiff and to each class member overtime wages in an amount in excess of \$25,000 to be established at the time of trial.

23. Pursuant to California Labor Code section 1194, Plaintiff seeks on his behalf and on behalf of each class member, reasonable attorney's fees and interest on unpaid wages, and costs of suit.

V.

THIRD CAUSE OF ACTION

(Class Action Against All Defendants by Plaintiff, on Behalf of All Other Tax Associates and Tax Seniors Similarly Situated, for Statutory Waiting Time Penalties for Failure to Pay Wages)

24. Plaintiff incorporates by reference each and every allegation set forth in paragraphs 1 through 11, 13 through 16 and 19 through 22 as if set forth in full herein.

25. California Labor Code sections 201 and 202 require an employer to pay all wages earned but unpaid immediately upon the involuntary discharge of an employee or within seventy-two (72) hours of an employee's voluntary termination of employment. If an employer

1 intentionally or willfully fails to pay all wages earned and due upon termination, as set forth
2 above, the affected employee is entitled to statutory waiting time penalties up to thirty (30) days
3 of wages under California Labor Code section 203.
4

5 26. Defendants intentionally and willfully failed to pay Plaintiff and each class
6 member who separated from, or was discharged by, Defendants the overtime premium owed to
7 them as required despite the fact that those wages were due and owing to said individuals.
8

9 27. At no time has Plaintiff or a class member who terminated their employment with
10 Defendants during the statutory period secreted or absented themselves or otherwise refused to
11 accept payment of wages earned and due to them upon termination. Plaintiff brings this action,
12 pursuant to California Code of Civil Procedure section 382, against all Defendants on his behalf
13 and on behalf of all persons similarly situated in California. The class which Plaintiff represents
14 is comprised of all Tax Associates and Tax Seniors who were employed in Defendants' business
15 locations in California during the statutory period, who were paid a salary and who worked
16 overtime during the statutory period, and who either quit or were discharged from Defendants'
17 employment.
18

19 28. Plaintiff seeks against Defendants for himself and for each class member the
20 statutory waiting time penalty under California Labor Code section 203. Defendants
21 intentionally and willfully failed to pay Plaintiff and each class member the overtime premium
22 required by the Wage Order. Thirty (30) days has expired since the end of Plaintiff's and each
23 class member's employment with Defendants. Therefore, Plaintiff seeks an award of the
24 statutory waiting time penalty from Defendants in the amount of thirty (30) days' wages for
25 Plaintiff and for each class member, with interest thereon.
26
27
28

VI.

FOURTH CAUSE OF ACTION

(Class Action Against All Defendants by Plaintiff, on Behalf of All Other
Tax Associates and Tax Seniors Similarly Situated,
for Restitution of Overtime Wages and Injunctive
Relief for Unfair Business Practices
Pursuant to California Business & Professions
Code sections 17200, et seq.)

29. Plaintiff incorporates by reference each and every allegation set forth in paragraphs 1 through 11, 13 through 16 and 19 through 22 as if set forth in full herein.

30. Defendants' conduct as alleged above constitutes an unfair and unlawful business practice within the meaning of California Business & Professions Code sections 17200 and 17204. Plaintiff, on his own behalf and on behalf of all others similarly situated, seeks restitution and disgorgement from Defendants of premium overtime pay withheld from salaried Tax Associates and Tax Seniors who are or were employed in Defendants' business locations in California during the statutory period (four (4) years).

31. As a direct and proximate result of the unlawful and unfair conduct of Defendants, Plaintiff and the class members have suffered, and will continue to suffer, the loss of money owed to them in a sum as yet uncertain, but in excess of \$25,000.

32. Unless restrained Defendants will continue to commit the unfair and unlawful business practices alleged above. Plaintiff therefore seeks a preliminary and permanent injunction pursuant to California Business & Professions Code sections 17203 and 17204 to enjoin Defendants from committing such practices in the future

VII.
PRAYER

WHEREFORE, Plaintiff, and class members, pray for judgment against Defendants, and each of them, and DOES 1 through 50 as follows:

1 ON THE FIRST CAUSE OF ACTION:

- 2 a. For compensatory damages including, but not limited to, lost wages and overtime
3 compensation in excess of \$25,000.
4 b. For pre- and post-judgment interest.
5 c. For reasonable attorney's fees and costs pursuant to Labor Code section 1194(a).

6 ON THE SECOND CAUSE OF ACTION:

- 7 d. For compensatory damages including, but not limited to, lost wages and overtime
8 compensation in excess of \$25,000.
9 e. For pre- and post-judgment interest.
10 f. For reasonable attorney's fees and costs pursuant to Labor Code section 1194(a).

11 ON THE THIRD CAUSE OF ACTION:

- 12 g. For the statutory waiting time penalties pursuant to California Labor Code section
13 203.
14 h. For pre- and post-judgment interest.

15 ON THE FOURTH CAUSE OF ACTION:

- 16 i. For an order requiring Defendants to make full restitution of all money and other
17 property acquired by their violation of Business and Professions Code section 17200
18 et seq.
19 j. For pre- and post-judgment interest.

20 ON ALL CAUSES OF ACTION:

- 21 k. For costs and expenses in this action; and
22 l. Any other and further relief as the nature of the case may require, and, or that the
23 Court deems proper.

24 ///

25 ///

26 ///

27 ///

28 ///

1 DATED: December 11, 2006

LAW OFFICES OF ARMOND MARCARIAN

2
3
4 By: 

5 ARMOND MARCARIAN
6 Attorneys for Plaintiff Stepan Mekhitarian
7

8 HARRIS & KAUFMAN

9
10
11 By: 

12 WILLIAM E. HARRIS
13 Attorneys for Plaintiff Stepan Mekhitarian
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ORIGINAL FILED

JAN 17 2007

**LOS ANGELES
SUPERIOR COURT**

SEYFARTH SHAW LLP
Kenneth D. Sulzer (State Bar No. 120253)
Andrew M. Paley (State Bar No. 149699)
Sheryl L. Skibbe (State Bar No. 199441)
Regina A. Musolino (State Bar No. 198872)
2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

Attorneys for Defendant
DELOITTE & TOUCHE (ICS), LLC and DELOITTE TAX, LLP

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST

STEPAN MEKHITARIAN, an individual, on
behalf of all others similarly situated,

Plaintiff,

v.

DELOITTE & TOUCHE (ICS), LLC, a
Delaware Limited Liability Company; and
DELOITTE TAX, LLP, a Delaware Limited
Liability Partnership; and DOES 1 THROUGH
50, inclusive,

Defendants.

Case No. BC 363334

ANSWER TO COMPLAINT

(Case Assigned to Hon. Victoria G. Chaney
Dept.: 324 CCW)

Complaint Filed: 12/13/2006

Defendants DELOITTE & TOUCHE (ICS), LLC and DELOITTE TAX, LLP
(collectively referred to as "Defendants") hereby answer Plaintiff Stepan Mekhitarian's
("Plaintiff") unverified Complaint ("Complaint") as follows:

GENERAL DENIAL

1. Pursuant to the provisions of California Code of Civil Procedure Section
431.30(d), Defendants deny, generally and specifically, each and every allegation, statement,
matter and each purported cause of action contained in Plaintiff's Complaint, and without
limiting the generality of the foregoing, denies, generally and specifically, that Plaintiff has been
damaged in the manner or sums alleged, or in any way at all, by reason of any acts or omissions
of Defendants.

ANSWER TO COMPLAINT

AFFIRMATIVE DEFENSES

2. In further answer to Plaintiff's Complaint, Defendants allege the following additional defenses. In asserting these defenses, Defendants do not assume the burden of proof as to matters that, pursuant to law, are Plaintiff's burden to prove.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

3. The Complaint and each cause of action alleged therein fail to state facts sufficient to constitute claims upon which relief can be granted against Defendants.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

4. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations, including but not limited to, Code of Civil Procedure sections 338, 339, and 340 and California Business & Professions Code section 17208.

THIRD AFFIRMATIVE DEFENSE

(Laches)

5. Plaintiff has delayed inexcusably and unreasonably in the filing of this action causing substantial prejudice to Defendants, and thus, Plaintiff's claims are barred by the equitable doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

(Waiver and Estoppel)

6. Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrines of waiver and estoppel.

FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

7. Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of unclean hands.

///

EXHIBIT B

///

SIXTH AFFIRMATIVE DEFENSE**(Exempt Status)**

8. Plaintiff's Complaint is barred because Defendants' failure to pay overtime was not unlawful, unfair or fraudulent. At all times relevant and material herein, the parties to this action were exempt from the overtime compensation requirements of the California Labor Code and the Industrial Welfare Commission Wage Order because the Tax Seniors and Tax Associates were employed in an administrative, executive or professional capacity within the meaning of the applicable wage order.

SEVENTH AFFIRMATIVE DEFENSE**(Good Faith)**

9. Plaintiff is not entitled to any penalty award under section 203 of the California Labor Code since, at all times relevant and material herein, Defendants did not willfully fail to comply with the compensation provisions of the California Labor Code, Cal. Labor Code § 200, et seq., but rather acted in good faith and had reasonable grounds for believing that it did not violate the compensation provisions of the California Labor Code, Cal. Labor Code § 200, et seq.

PRAYER

Wherefore, Defendants pray for judgment as follows:

1. That Plaintiff takes nothing for the Complaint;
2. That judgment be entered in favor of Defendants and against Plaintiff on all causes of action;
3. That Defendants be awarded reasonable attorneys fees according to proof;
4. That Defendants be awarded the costs of suit incurred herein; and
5. That Defendants be awarded such other and further relief as the Court may deem appropriate.

DATED: January 17, 2007

SEYFARTH SHAW LLP

By

Regina A. Musolino
Regina A. Musolino

Attorneys for Defendants

DELOITTE & TOUCHE (ICS) LLC; DELOITTE
TAX, LLP

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
 3 COUNTY OF LOS ANGELES) ss

4 I am a resident of the State of California, over the age of eighteen years, and not a party
 5 to the within action. My business address is Seyfarth Shaw LLP, 2029 Century Park East, Suite
 6 3300, Los Angeles, California 90067-3063. On January 17, 2007, I served the within
 documents:

7 **ANSWER TO COMPLAINT**

8 ☐ I sent such document from facsimile machine (310) 201-5219 on January 17, 2007. I
 9 certify that said transmission was completed and that all pages were received and that
 10 a report was generated by facsimile machine (310) 201-5219 which confirms said
 transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this
 action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the
 parties listed below.

11 ☒ by placing the document(s) listed above in a sealed envelope with postage thereon
 12 fully prepaid, in the United States mail at Los Angeles, California addressed as set
 forth below.

13 ☐ by personally delivering the document(s) listed above to the person(s) at the
 14 address(es) set forth below.

15 ☐ by placing the document(s) listed above, together with an unsigned copy of this
 16 declaration, in a sealed Federal Express envelope with postage paid on account and
 deposited with Federal Express at Los Angeles, California, addressed as set forth
 below.

17 ☐ by transmitting the document(s) listed above, electronically, via the e-mail addresses
 18 set forth below.

19 Armond Marcarian, Esq.
 20 Law Offices of Armond Marcarian
 15260 Ventura Boulevard
 Penthouse Suite 2250
 21 Sherman Oaks, CA 91403

22 I am readily familiar with the firm's practice of collection and processing correspondence
 23 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
 24 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
 motion of the party served, service is presumed invalid if postal cancellation date or postage
 meter date is more than on day after the date of deposit for mailing in affidavit.

25 I declare under penalty of perjury under the laws of the State of California that the above
 is true and correct.

26 Executed on January 17, 2007, at Los Angeles, California.

27 *Millie Baello*

28 Millie Baello

EXHIBIT B

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
 3 COUNTY OF LOS ANGELES) ss

4 I am a resident of the State of California, over the age of eighteen years, and not a party
 5 to the within action. My business address is Seyfarth Shaw LLP, 2029 Century Park East, Suite
 3300, Los Angeles, California 90067-3063. On January 17, 2007, I served the within
 documents:

6 **NOTICE OF REMOVAL; DECLARATIONS OF EDITH GARWOOD,
 BARBARA NEWMAN AND SHERYL L. SKIBBE**

7
 8 ☐ I sent such document from facsimile machine (310) 201-5219 on January 17, 2007. I
 9 certify that said transmission was completed and that all pages were received and that
 10 a report was generated by facsimile machine (310) 201-5219 which confirms said
 transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this
 action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the
 parties listed below.

11 ☒ by placing the document(s) listed above in a sealed envelope with postage thereon
 12 fully prepaid, in the United States mail at Los Angeles, California addressed as set
 forth below.

13 ☐ by personally delivering the document(s) listed above to the person(s) at the
 14 address(es) set forth below.

15 ☐ by placing the document(s) listed above, together with an unsigned copy of this
 16 declaration, in a sealed Federal Express envelope with postage paid on account and
 deposited with Federal Express at Los Angeles, California, addressed as set forth
 below.

17 ☐ by transmitting the document(s) listed above, electronically, via the e-mail addresses
 18 set forth below.

19 William E. Harris
 20 Matthew A. Kaufman
 21 Harris & Kaufman
 15260 Ventura Boulevard, Suite 2250
 Sherman Oaks, CA 91403

Armond Marcarian, Esq.
 Law Offices of Armond Marcarian
 15260 Ventura Boulevard
 Penthouse Suite 2250
 Sherman Oaks, CA 91403

22 I am readily familiar with the firm's practice of collection and processing correspondence
 23 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
 24 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
 motion of the party served, service is presumed invalid if postal cancellation date or postage
 meter date is more than on day after the date of deposit for mailing in affidavit.

25 I declare that I am employed in the office of a member of the bar of this court whose
 26 direction the service was made.

27 Executed on January 17, 2007, at Los Angeles, California.

28 *Millie Baello*

Millie Baello

SEYFARTH SHAW LLP
Kenneth D. Sulzer (State Bar No. 120253)
Andrew M. Paley (State Bar No. 149699)
Sheryl L. Skibbe (State Bar No. 199441)
Regina A. Musolino (State Bar No. 198872)
2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
Telephone: (310) 277-7200
Facsimile: (310) 201-5219
Email: ksulzer@seyfarth.com; apaley@seyfarth.com
sskibbe@seyfarth.com; rmusolino@seyfarth.com

Attorneys for Defendants
DELOITTE & TOUCHE (ICS) LLC and DELOITTE TAX LLP

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STEPAN MEKHITARIAN, an
individual, on behalf of all others
similarly situated,

Plaintiff,

v.

DELOITTE & TOUCHE (ICS), LLC, a
Delaware Limited Liability Company;
and DELOITTE TAX, LLP, a Delaware
Limited Liability Partnership; and DOES
1 THROUGH 50, inclusive,

Defendants.

Case No. CV 07-0412 DSF (MANx)

**DELOITTE TAX LLP'S
RESPONSE TO ORDER TO
SHOW CAUSE REGARDING
PRINCIPAL PLACE OF
BUSINESS**

[DECLARATIONS OF BARBARA
NEWMAN AND KATHLEEN
FARLOW ATTACHED HERETO]

COURTROOM: 840

I. INTRODUCTION

In its March 14, 2007 Order to Show Cause, the Court stated that under the Class Action Fairness Act of 2005 (“CAFA”) “an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.” Order to Show Cause, p.1 (citing 28 U.S.C. § 1332(d)(10)). The Court directed Defendant Deloitte Tax LLP to submit additional facts to support a finding that its principal place of business is New York. Order to Show Cause, p.1.

When a corporation’s business activities are “far flung” and do not “substantially predominate” in any one state, the Ninth Circuit applies the “nerve center test” to determine the entity’s principal place of business. Accordingly, as its business activities are nationally dispersed and do not substantially predominate in any one state, Deloitte Tax submitted a declaration identifying the location of the majority of its executive and administrative functions.

Deloitte Tax now provides supplemental evidence, in addition to its original declaration, demonstrating that Deloitte Tax’s principal place of business is New York. *See* Second Declaration of Barbara Newman (“Newman Second Decl.”) and Declaration of Kathleen Farlow filed concurrently herewith.

II. ARGUMENT

A. The “Nerve Center” Test Applies To Determine A Corporation’s Principal Place of Business When Its Activities Do Not Substantially Predominate In Any One State.

The Ninth Circuit uses one of two tests to determine a corporation’s principal place of business: (1) the “place of operations” test or (2) the “nerve center” test. *Industrial Tectonics, Inc. v. Aero Alley*, 912 F.2d 1090, 1092 (9th Cir. 1990). The “place of operations” test examines which state “contains a substantial predominance of corporate operations.” *Id.* Where there is no substantial predominance of operations in any one state, courts apply the “nerve center” test. *Id.* at 1094. Thus, the key issue is determining whether Deloitte Tax’s business

1 activities substantially predominate in any one state. The evidence demonstrates
2 they do not.

3 The “place of operations” test applies “where a corporation conducts
4 ‘substantially all’ of its operations in one state and its headquarters is located in
5 another state” or where the business activities in one state are “significantly larger
6 than any other state in which the corporation does business.” *Arellano v. Home*
7 *Depot U.S.A.*, 245 F. Supp. 2d 1102, 1105 (S.D. Cal. 2003) (citing *Indus.*
8 *Tectonics*, 912 F.2d at 1093). Courts analyze “a number of factors to determine if
9 a given state contains a substantial predominance of corporate activity, including
10 the location of employees, tangible property, production activities, sources of
11 income, and where sales take place.” *Tosco Corp. v. Communities For A Better*
12 *Environment*, 236 F.3d 495, 500 (9th Cir. 2001); *Ho v. Ikon Office Solutions, Inc.*,
13 143 F. Supp. 2d 1163, 1165-66 (N.D. Cal. 2001). Another relevant factor is the
14 location of the defendant’s executive and administrative functions. *Arellano*, 245
15 F. Supp. 2d at 1107.

16 The “nerve center” test is generally utilized when a corporation’s activities
17 are “spread relatively evenly” and operations are conducted in many states.
18 *Arellano v. Home Depot U.S.A.*, 245 F. Supp. 2d 1102, 1106 (S.D. Cal. 2003). The
19 test locates a company’s “principal place of business in the state where the
20 majority of its executive and administrative functions are performed.” *Tosco*
21 *Corp.*, 236 F.3d at 500 (citing *Industrial Tectonics*, 912 F.2d at 1092-93). Some
22 relevant considerations under this test include where the directors and owners meet
23 and live, where the executives live and work, where the administrative and
24 financial offices and records are located, where the “home office” is located, where
25 policy decisions are made, and where day-to-day control of the business is
26 exercised. *See Unger v. Del E. Webb Corp.*, 233 F. Supp. 713, 716 (ND Cal.
27 1964). Because Deloitte Tax’s business operations do not substantially
28

predominate in any one state, the “nerve center test” is the applicable test to determine its principal place of business.

B. The Assessment Of Deloitte Tax’s Business Activities Must Take Into Account The Distorting Effect Of California’s Population And Economy.

Courts take into account that California is the most populous state and, thus, mitigate the distorting effects this has on a company’s activities. *Arellano*, 245 F. Supp. 2d at 1106-7 (assessing workforce by state capita percentage – “Because California is the state with the largest population, business activity on a national scale can be expected to be greater in California.”); *Ho*, 143 F. Supp. 2d at 1168 (“[I]t is highly unlikely that Congress intended every national corporation that does more business in California than in any other single state, by virtue of that fact alone, to be deemed a citizen of California for purposes of diversity jurisdiction.”).

For example, in *Arellano v. Home Depot U.S.A., Inc.*, Home Depot removed an employment discrimination lawsuit to federal court based on diversity. 245 F. Supp. 2d at 1104-05 After a motion to remand was filed that challenged Home Depot’s citizenship, Home Depot successfully argued that the “nerve center test” applied even though the large majority of its workforce was in California---nearly double Florida’s workforce, which was the next highest state percentage. *Id.* at 1106-7 (15% of Home Depot’s workforce was in California as opposed to only 9.3% in Florida)

The *Arellano* court, relying on *Ho v. Ikon Office Solutions, Inc.*, explained that due to Home Depot’s national presence,¹ its activities must be assessed on a per capita basis to avoid the “distorting” effect of California’s population. *Id.* at 1107, n. 1 (noting that the difference between Home Depot’s California and Florida workforce was not that significant taking into account each state’s population). In reaching its decision, the *Arellano* court rejected the employee’s reliance on *Ghaderi v. United Airlines*, 136 F. Supp. 2d 1041 (N.D. Cal 2001)

¹ At the time of this decision, Home Depot operated stores in 49 states.

(holding that an eight percent difference in workforce demonstrated substantial predominance) because *Ghaderi* involved an employer with substantial operations in only *two* states, not a national employer like Home Depot. *Id.*

C. Deloitte Tax's Operations Are Nationally Dispersed.

Deloitte Tax's activities are widely dispersed throughout the United States. Newman Second Decl., ¶ 4. Deloitte Tax is the quintessential "far-flung" organization, with a substantial workforce and large number of offices in 37 states and revenue generated across the country. *Id.*, ¶ 4. *Arellano*, 245 F. Supp. 2d at 1106 ("(The nerve center test) is generally utilized when a corporation's activities are far flung and operations are conducted in many states."). Cases such as *Tosco Corp.* and *Ghaderi* are factually distinguishable. In short, those cases involved situations in which a corporation had substantial operations in only a few states, and where a substantial majority of employees were located in, and the majority of sales occurred within, the state of California.

1. Deloitte Tax Has Personnel In Thirty-Seven States.

Deloitte Tax's workforce is widely dispersed across the country. Farlow Decl. ¶ 4. Approximately 6,971 individuals work for Deloitte Tax in 37 different states, and no one state accounts for more than twenty percent of its workforce. *Id.* Approximately 83% of Deloitte Tax's personnel work outside the state of California. *Id.* Of the 6,971 individuals, 1,180 work in California (17%). *Id.* New York and Texas are a close second with 794 people (12%) and 820 people in Texas (12%). *Id.* Illinois has 705 workers (10%). *Id.*

STATE	PERCENTAGE OF EMPLOYEES
California	17%
New York	12%
Texas	12%

Illinois	10%
Ohio	5%
Georgia	5%
Michigan	4%

Farlow Decl. ¶¶ 4, 5. The remaining 35 % of personnel operate out of 30 states.

Farlow Decl. ¶5.

Moreover, using comparative percentages of gross numbers as opposed to per capita percentages, which makes adjustments for California's disproportionate share of the U.S. population and economy, the margin of difference is even less significant for a company that has personnel in 37 states. In fact, while California's population exceeds 36 million people -- more than ten percent of the estimated 296 million U.S. population -- only 17% of Deloitte Tax's personnel are located in California. New York, with a population of slightly more than 19 million people, has 12% of Deloitte Tax's workforce and Illinois, with a population of not quite 13 million people, has 10% of Deloitte Tax's personnel. Texas has a population of approximately 24 million people and almost 12% of Deloitte Tax's personnel are located there. Even Ohio, which has a population of slightly more than 11 million people accounts for almost 5% of Deloitte Tax's workforce.² Based on these figures, only 0.003278% of California's population is employed by Deloitte Tax while 0.004547% of New York's population and 0.003417% of Texas' population works for Deloitte Tax.

These numbers are equivalent to those in *Arellano*, where the court determined that Home Depot's workforce was widely dispersed and did not substantially predominate in California. *Arellano*, 245 F. 2d at 1107 (finding California workforce of 15% followed by 9% in Florida and 8% in Georgia widely

² Population estimates for 2006 were obtained from the United States Census Bureau at www.census.gov.

1 dispersed). California is the state with the largest population and it is to be
 2 expected that business activity conducted by companies on a national scale will be
 3 greater in California.

4 **2. Deloitte Tax's Revenue Is Generated Throughout the**
 5 **Country.**

6 Like its workforce, Deloitte Tax's revenue generated on a per capita basis is
 7 widely dispersed and does not predominate in California. Deloitte Tax earns
 8 revenue in at least 37 states. Newman Second Decl. ¶ 5. As of 2006, Deloitte Tax
 9 earned approximately 84% of its revenue in 36 of those states and 16% of its
 10 revenue in California. *Id.* ¶ 5. Deloitte Tax earned approximately 11% in New
 11 York. *Id.* ¶ 5. Deloitte Tax also earned 11.2% in Illinois. *Id.* Deloitte Tax also
 12 earned approximately 5.1% of its revenue in Ohio, 4.6 % of its revenue in Georgia,
 13 and 3.9% of its revenue in Michigan. *Id.* The remaining 48.2% of Deloitte Tax's
 14 revenue was earned in its offices in 34 other states. *Id.* Again, the comparative
 15 difference in percentages does not weigh in favor of finding California as Deloitte
 16 Tax's principal place of business given its size and the fact that its business
 17 activities do not substantially predominate in any one particular state.

18 **3. Deloitte Tax's Property is Widely Dispersed Throughout**
 19 **the Country.**

20 Deloitte Tax owns property in at least 31 of the states where it has offices.
 21 Newman Second Decl. ¶ 6. At least 80% of Deloitte Tax's property is located in
 22 30 of those states and 20% in California. *Id.* While 20% of Deloitte Tax's
 23 property is located in California, 19.12% of its property is located in New York.
 24 *Id.* Additionally, 10.24% of Deloitte Tax's property is located in Illinois and
 25 10.13% of its property is located in Pennsylvania. *Id.* Deloitte Tax's property
 26 holdings in California cannot be said to substantially predominate as the property
 27 holdings in New York are almost identical and Deloitte Tax has significant
 28 property holdings throughout the United States.

D. New York Is Deloitte Tax's Principal Place of Business Because of Its Executive And Administrative Functions Are Located in New York

Based on the foregoing evidence, Deloitte Tax's business activities can only be said to be spread relatively evenly across numerous states. Accordingly, the nerve center test should be applied to determine its principal place of business.

Deloitte Tax's "National Office," for purposes of performing executive functions is located in New York. Newman Decl., ¶ 5; Farlow Decl. ¶ 6. From its National Office in New York, New York, Deloitte Tax conducts such executive operations, including but not limited to, those relating to firm-wide policies and procedures, legal affairs, and general operations of its tax practice. Farlow Decl. ¶ 8. The Chief Executive Officer lives and works in New York. Farlow Decl. ¶ 7. Although other managing officers for Deloitte Tax are located throughout the country, all of the Deputy National Managing Partners report to the CEO in New York and must frequently travel to New York for meetings with the CEO. Farlow Decl. ¶ 9. The Deputy National Managing Partners also attend frequent meetings that are regularly held in New York. *Id.*

Other important executive functions take place in the New York City office. The Tax Executive Group, the Tax Management Group and the Tax Advisory Group hold their meetings in New York³. Farlow Decl. ¶ 10. Additionally, other meetings, such as partner and director candidate discussions take place in New York. Farlow Decl. ¶ 11.

Both the Strategy and Communications Departments are also physically based in New York and the Chief Strategy Officer works in New York. Farlow

³ The Tax Executive Group is comprised of tax leaders, including regional leaders, deputies, and select service line leaders. The Tax Management Group is comprised of tax leaders including the Tax Executive Group, Learning & Development, Communications, and other service lines. The Tax Advisory Group is comprised of tax partners and directors across the firm. This group meets several times a year to discuss issues relevant to the CEO and the tax practice and provide guidance on addressing and resolving these issues. Farlow Decl. ¶ 10.

1 Decl. ¶ 12. Strategy meetings relating to personnel, communications, culture and
2 Information Technology matters are held in New York. *Id.*


3 As a result, Deloitte Tax's principal place of business is New York. Deloitte
4 Tax is not now, and was not at the time of the filing of the Complaint, a citizen of
5 the state of California within the meaning of the Acts of Congress relating to the
6 removal of cases.

7 **III. CONCLUSION**

8 Deloitte Tax's removal of this action was proper. Deloitte Tax is an
9 unincorporated association under 28 U.S.C. 1332 (d)(10) making the determination
10 of its citizenship the same as that of a corporation. The parties to this lawsuit are
11 minimally diverse. Mekhitarian admits that he is a California resident. Under the
12 nerve center test, Deloitte Tax's principal place of business is New York and it is
13 incorporated in Delaware. Accordingly, Plaintiff has diverse citizenship from
14 Deloitte Tax, the amount in controversy exceeds \$5,000,000 and the number of
15 putative class members is greater than 100. For the reasons stated herein,
16 Plaintiff's motion should be denied.

17 DATED: March 21, 2007

SEYFARTH SHAW LLP

18
19 By 
20 Sheryl L. Skibbe
21 Attorneys for Defendant
22 DELOITTE TAX LLP
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DECLARATION OF BARBARA NEWMAN

I, Barbara Newman, declare as follows:

1. I am Partner In Charge - Partners Financial Services and U.S. Firm's Taxes for Deloitte & Touche USA LLP and I have that held that position since June 1, 2003. Defendant Deloitte Tax LLP ("Deloitte Tax") is a subsidiary of Deloitte & Touche USA LLP. In my position, I am familiar with and have personal knowledge of Deloitte Tax's organization as a limited liability partnership and its general business affairs. In this position, I am also responsible for the preparation of Deloitte Tax's federal and state tax returns. As such, I have personal knowledge of the matters stated herein and if called and sworn as a witness, I could and would competently testify as set forth herein.

2. In addition to having personal knowledge, as part of my normal business responsibilities, of Deloitte Tax's organization as a limited liability partnership, I also have obtained information and reviewed business records concerning the organization of Deloitte Tax and the operations of that entity. The information compiled (as set forth in this declaration, below) is based on my personal knowledge as well as the records maintained in Deloitte Tax's regular practice and in the course of Deloitte Tax's regularly conducted business activity. As Partner In Charge - Partners Financial Services and U.S. Firm's Taxes at Deloitte & Touche USA LLP, I am one of the custodians of such records and information that pertain to the business operations of Deloitte Tax.

3. Deloitte Tax LLP is a limited liability partnership organized under the laws of the State of Delaware and was so organized as of December 13, 2006.

4. Deloitte Tax's activities are widely dispersed throughout the United States, with a substantial number of employees and offices in 37 states.

5. Deloitte Tax earns revenue in at least 37 states. As of 2006, Deloitte Tax earned approximately 84% of its revenue in 36 of those states and 16% of its revenue in California. Deloitte Tax earned approximately 11% in New York. Deloitte Tax earned approximately 11.2% of its revenue in Illinois in 2006. Deloitte Tax also earned approximately 4.6 % of its revenue in Georgia, 5.1% of its revenue in Ohio and 3.9% of its revenue in Michigan. In 2006, the remaining 48.2% of Deloitte Tax's revenue was earned in its offices in 31 other states.

6. As of 2006, Deloitte Tax owned property, largely comprised of furniture, fixtures and computers, in at least 31 of the states where its offices are located. 80% of Deloitte Tax's property is located in 30 of those states and 20% in California. 19.12% of its property is located in New York. Additionally, 10.24% of its property is located in Illinois and 10.13% of its property is located in Pennsylvania.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this Declaration was executed this 21 day of March 2007, at Hermitage, Tennessee.

Barbara Newm

Barbara Newman

DECLARATION OF KATHLEEN FARLOW

I, Kathleen Farlow, declare as follows:

1. I am the Deputy National Managing Partner -- People for Deloitte Tax LLP ("Deloitte Tax") and I report to the Chief Executive Officer of Deloitte Tax. I have held this position for a year and a half, and have been associated with Deloitte Tax for 23 years. In my position, I am familiar with and have personal knowledge of Deloitte Tax's general business affairs. As such, I have personal knowledge of the matters stated herein and if called and sworn as a witness, I could and would competently testify as set forth herein.

2. In addition to having personal knowledge of Deloitte Tax's organization, as part of my normal business responsibilities, I also have obtained information and reviewed business records concerning the organization of Deloitte Tax and the operations of that entity. The information compiled (as set forth in this declaration, below) is based on my personal knowledge as well as the records maintained in Deloitte Tax's regular practice and in the course of Deloitte Tax's regularly conducted business activity. .

3. Deloitte Tax's principal place of business is located in the State of New York.

4. Deloitte Tax's workforce is widely dispersed across the country. Approximately 6,971 individuals work for Deloitte Tax in 37 different states, and no one state accounts for more than twenty percent of its workforce. Approximately 83% of Deloitte Tax's personnel work outside the state of California. Of the 6,971 individuals, 1,180 work in California (17%). New York and Texas are a close second with 794 people (12%) and 820 people in Texas (12%). Illinois has 705 workers (10%).

1 5. Deloitte Tax also has personnel in the following states: Ohio - 5%;
2 Georgia - 5% ; Michigan - 4%. The remaining 35% of personnel operate out the
3 rest of the 30 states.

4 6. Deloitte Tax maintains its National Office at 1633 Broadway, New
5 York, New York, 10019-6754. Deloitte Tax's executive operations are managed
6 from this location.

7 7. Deloitte Tax's Chief Executive Officer maintains his offices at 1633
8 Broadway, New York, New York, 10019-6754.

9 8. From its National Office in New York, New York, Deloitte Tax
10 conducts such executive and administrative operations, including but not limited
11 to, those relating to firm-wide policies and procedures, legal affairs, and general
12 operations of its tax practice.

13 9. Other officers for Deloitte Tax are located throughout the country,
14 though all of the various managing partners report to the CEO in New York and
15 frequently travel to New York to do so. The Deputy National Managing Partners
16 also attend frequent meetings that are regularly held in New York.

17 10. Other important executive functions take place in the New York City
18 office. The Tax Executive Group, the Tax Management Group and the Tax
19 Advisory Group frequently meet in New York. The Tax Executive Group is
20 comprised of tax leaders, including regional leaders, deputies, and select service
21 line leaders. The Tax Management Group is comprised of tax leaders including
22 the Tax Executive Group, Learning & Development, Communications, and other
23 service lines. The Tax Advisory Group is comprised of tax partners and directors
24 across the firm. This group meets several times a year to discuss issues relevant to
25 the CEO and the tax practice and provide guidance on addressing and resolving
26 these issues.

27 11. Partner and director candidate discussions take place in New York
28

1 12. The Strategy and Communications Departments are also physically
2 based in New York and the Chief Strategy Officer works in New York. Strategy
3 meetings relating to matters including personnel, communications, culture and IT
4 are held in New York.

5
6 I declare under penalty of perjury under the laws of the United States of
7 America and the State of California that the foregoing is true and correct and that
8 this Declaration was executed this 21st day of March 2007, at 3:00, MST
9 Tamarack, Idaho

10 
11 Kathleen Farlow

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF LOS } ss
ANGELES }

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Seyfarth Shaw LLP, 2029 Century Park East, Suite 3300, Los Angeles, California 90067-3063. On March 21, 2007, I served the within documents:

**DELOITTE TAX LLP'S RESPONSE TO ORDER TO SHOW CAUSE
REGARDING PRINCIPAL PLACE OF BUSINESS**

- ☐ I sent such document from facsimile machine (310) 201-5219 on March 21, 2007. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (310) 201-5219 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ by placing the document(s) listed above, together with an unsigned copy of this declaration, in a sealed Federal Express envelope with postage paid on account and deposited with Federal Express at Los Angeles, California, addressed as set forth below.
- ☐ by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

William E. Harris
Matthew A. Kaufman
Harris & Kaufman
15260 Ventura Boulevard, Suite 2250
Sherman Oaks, CA 91403

Armond Marcarian, Esq.
Law Offices of Armond Marcarian
15260 Ventura Boulevard
Penthouse Suite 2250
Sherman Oaks, CA 91403

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.

1
2 I declare that I am employed in the office of a member of the bar of this
3 court whose direction the service was made.

4 Executed on March 21, 2007, at Los Angeles, California.

5 Millie Baello

6 Millie Baello
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